

Supreme Court of the United States

OCTOBER TERM, 1966

No. 781

NATIONAL LABOR RELATIONS BOARD,
PETITIONER

vs.

GREAT DANE TRAILERS, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT

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Original Print

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[fol. 1]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 22,427

NATIONAL LABOR RELATIONS BOARD, PETITIONER

versus

GREAT DANE TRAILERS, INC., RESPONDENT

PETITION FOR ENFORCEMENT OF AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD—March 23, 1965

To the Honorable, the Judges of the United States Court
of Appeals for the Fifth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Secs. 151, et seq., as amended by 73 Stat. 519), hereinafter called the Act, respectfully petitions this Court for the enforcement of its Order against Respondent, Great Dane Trailers, Inc., its officers, agents, successors, and assigns. Case No. 10-CA-5518.

In support of this petition the Board respectfully shows:

(1) Respondent is engaged in business in the State of Georgia, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10(e) of the National Labor Relations Act, as amended.

(2) Upon due proceedings had before the Board in said matter, the Board on December 16, 1964, duly stated its findings of fact and conclusions of law, and issued an Order directed to the Respondent, Great Dane Trailers, Inc., its officers, agents, successors, and assigns. On the same date, the Board's Decision and Order was served upon Respondent by sending a copy thereof postpaid bear-

ing Government frank, by registered mail, to Respondent's counsel.

(3) Pursuant to Section 10(e) of the National Labor Relations Act, as amended, and pursuant to Rule 38(1) of this Court, the Board is certifying and filing with this Court a certified list of all documents, transcripts of testimony, exhibits and other material comprising the entire record of the proceeding before the Board upon which the said Order was entered, which transcript includes the pleadings, testimony and evidence, findings of fact, conclusions of law, and the Order of the Board sought to be enforced.

WHEREFORE, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondent and that this Court take jurisdiction of the proceedings and of the questions determined therein and make and enter upon the pleadings, testimony, and evidence, and the proceedings set forth in the transcript and upon the Order made thereupon a decree enforcing in whole said Order of the Board, [fol. 3] and requiring Respondent, Great Dane Trailers, Inc., its officers, agents, successors, and assigns, to comply therewith.

(Signed) MARCEL MALLET-PREVOST
Assistant General Counsel
National Labor
Relations Board

Dated at Washington, D. C.
this 23rd day of March, 1965.

IN THE UNITED STATES COURT OF APPEALS

ORDER TO FILE PETITION—Filed March 25, 1965.

A Petition for Enforcement of an Order of the National Labor Relations Board made December 16, 1964 in the proceeding known upon the record of the Board as Case No. 10-CA-5518, having been presented to this Court;

IT IS ORDERED that said Petition be filed and the case docketed as of March 25, 1965.

IT IS FURTHER ORDERED that the National Labor Relations Board file with the Clerk, a certified copy of the transcript of proceedings, or in lieu thereof, a certified list of all the documents, transcripts of testimony, exhibits and other material comprising the record of the [fol. 4] proceeding before the National Labor Relations Board, in the above entitled matter, within forty (40) days from this date as required by Rule 38, as amended.

EDWARD W. WADSWORTH
Clerk of the United States
Court of Appeals for the
Fifth Circuit.

(Signed) CLARA R. JAMES
Chief Deputy Clerk
For the Court
By Direction

IN THE UNITED STATES COURT OF APPEALS

ANSWER—April 8, 1965

TO: The Honorable, The Judges of the United States Court of Appeals for the Fifth Circuit:

Comes now GREAT DANE TRAILERS, INC., Respondent in the above-captioned cause, by its undersigned attorneys, and pursuant to Rule 38(2) of this Court, respectfully files this its Answer to the Petition heretofore filed herein, and shows:

1. The findings of the Petitioner with respect to questions of fact in Petitioner's Decision and Order dated December 16, 1964, are not supported by substantial evidence on the record considered as a whole.
2. The findings of fact and conclusions of law of the [fol. 5] Petitioner in said Decision and Order are not supported by the evidence.

3. The Petitioner's findings of fact and conclusions of law in said Decision and Order are contrary to the evidence.

4. The Order of the Petitioner is not supported by the evidence.

5. The Order of the Petitioner is contrary to the law.

6. The Decision and Order of the Petitioner is not supported by a preponderance of the testimony taken by the Petitioner.

7. Respondent denies that it committed any unfair labor practices within the meaning of the National Labor Relations Act, as amended, 61 Stat. 136, 29 U.S.C. Sec. 151, et seq., as amended by 73 Stat. 519.

8. All parts of said Order ordering the Respondent to take affirmative steps and action are improper, illegal, without support in fact, contrary to the evidence and contrary to the law.

9. All part of said Order ordering the Respondent to cease and desist certain actions are improper, illegal, without support in fact, contrary to the evidence and contrary to the law.

WHEREFORE, Respondent prays that this Honorable Court deny said Petition of the Petitioner in each and [fol. 6] every respect and set aside the Order of the Petitioner in its entirety.

Dated at Jacksonville, Florida, this 8 day of April, 1965.

HAMILTON, BOWDEN &
COFFMAN

(Signed) O. R. T. BOWDEN
Attorneys for Respondent

Address of Counsel:

Hamilton, Bowden & Coffman
1056 Hendricks Avenue
Jacksonville, Florida 32207

[Certificate of Service (omitted in printing)]

[fol. 7]

IN THE UNITED STATES COURT OF APPEALS

CERTIFIED LIST OF THE NATIONAL LABOR RELATIONS
BOARD—April 30, 1965

The National Labor Relations Board by its Executive Secretary, duly authorized by Section 102.115, Rules and Regulations of the National Labor Relations Board - Series 8, hereby certifies that the list set forth below constitutes a full and accurate transcript of the entire record of a proceeding had before said Board and known upon its records as Case No. 10-CA-5518. Such transcript includes the pleadings and testimony and evidence upon which the order of the Board in said proceeding was entered, and includes also the findings and order of the Board.

VOLUME I - Exhibits introduced into evidence:General Counsel's Exhibits:¹

- 1-a thru 1-f
- 2 and 3

Respondent's Exhibits:

- 1 thru 4

VOLUME II**CERTIFIED RECORD**

Stenographic transcript of testimony taken
before Trial Examiner Joseph I. Nachman
on May 19, 1964

1 - 123

[fol. 8]

VOLUME III - Pleadings

1. Copy of Trial Examiner Joseph I. Nachman's Decision issued on July 15, 1964 1 - 9
2. Copy of Respondent's exceptions received July 31, 1964 1 - 3

¹ General Counsel's Exhibits 1-a, 1-b, 1-c, 1-e are Pleadings and are contained in Volume III of the Board's Certified Record.

3. Copy of Respondent's amended exceptions received August 5, 1964 1 - 7
4. Copy of Decision and Order issued by the National Labor Relations Board on December 16, 1964 1 - 3

IN TESTIMONY WHEREOF, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 30th day of April 1965.

(Signed) OGDEN W. FIELDS
Executive Secretary
National Labor
Relations Board

[SEAL]

[fol. 9] BEFORE THE
NATIONAL LABOR RELATIONS BOARD

Case No. 10-CA-5518
* * * * *

ANSWER—April 20, 1963

Comes now Great Dane Trailers, Inc. and for answer to the complaint filed herein, thereto answering says:

I

That it admits the allegations as contained in paragraphs numbered 1, 2, 3, 4, 5, 6, 7, 9 and 10 of said complaint.

II

That it denies the allegations as contained in paragraphs 12, 13, 14 and 15 of said complaint.

III

As to paragraph number 8 of said complaint, the respondent admits that vacation pay was distributed to respondent's production and maintenance employees on or about July 1 in the years 1960, 1961 and 1962, but denies that said vacation pay was payable to employees on July 1, 1963.

IV

As to paragraph number 11, respondent states that said economic strikers, who had been replaced, were not entitled to vacation pay on July 1, 1963, that under the terms of the expired contract, they had not qualified therefore.

[fol. 10] WHEREFORE, having fully answered the complaint, the respondent moves for its dismissal.

Dated this 20th day of April, 1963.

HAMILTON & BOWDEN
(Signed) O. R. T. BOWDEN
Attorneys for
Great Dane Trailers, Inc.

Address of Counsel:

Hamilton & Bowden
1056 Hendricks Avenue
Jacksonville 7, Florida.

[Certificate of Service (omitted in printing)]

[fol. 11] BEFORE THE
NATIONAL LABOR RELATIONS BOARD

COMPLAINT AND NOTICE OF HEARING—April 10, 1964

* * * *

It having been charged by International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local No. 26, AFL-CIO, herein called the Union, that Great Dane Trailers, Inc., herein called Respondent, has engaged in, and is engaging in, unfair labor practices affecting commerce, as set forth and defined in the National Labor Relations Act, as amended, 29 U. S. C. Sec. 151, et seq., herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the undersigned Regional Director for the Tenth Region, issues this Complaint and Notice of Hearing pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, Series 8, as amended:

1.

A copy of the charge, filed on October 25, 1963, was served upon Respondent by registered mail on October 25, 1963.

2.

Respondent is, and has been at all times material herein, a Georgia corporation, with its principal office and place of business located at Savannah, Georgia, where it is engaged in the manufacture and sale of truck trailers.

[fol. 12]

3.

Respondent, during the past calendar year, which period is representative of all times material herein, sold and shipped finished products valued in excess of \$50,000 to customers located outside the State of Georgia.

4.

Respondent is, and has been at all times material herein, engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

5.

The Union is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

6.

Personnel Director Stephen Docie and Foreman James Griner and Arthur Davis are and have been at all times material herein supervisors within the meaning of Section 2(11) of the Act.

7.

On April 1, 1960, Respondent and Union entered into a collective bargaining contract covering Respondent's production and maintenance employees.

[fol. 13]

8.

Pursuant to Article VII, of said Contract, vacation pay was distributed to Respondent's production and maintenance employees on or about July 1, in the years 1960, 1961 and 1962, and was payable to such employees on July 1, 1963.

9.

On or about May 17, 1963, certain employees of Respondent ceased work concertedly and went out on strike.

10.

Striking employees of Respondent, during the months of May, June and July, 1963 requested that Respondent distribute to them vacation pay due them under said Contract Article VIII.

11.

Respondent failed and refused to distribute said vacation pay, and continues to refuse to distribute vacation pay to its striking employees.

12.

Respondent failed and refused to distribute said vacation pay to its striking employees because of their membership in and activities on behalf of the Union, and because they engaged in concerted activities with other employees for the purposes of collective bargaining and other mutual aid and protection.

[fol. 14]

13.

Respondent, by its following-named supervisors and agents, on or about the dates set opposite their respective names, in the vicinity of its plant, individually solicited its employees to abandon the strike, and promised them prompt payment of vacation pay and job promotion if they abandoned the strike and returned to work:

Personnel Director Stephen Docie	May 24, 1963
Foreman James Griner	September 20, 1963
Foreman Arthur Davis	November 14, 1963

14.

Each of the acts of Respondent alleged in paragraph 13 above constitutes unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

15.

The acts of Respondent alleged in paragraphs 11 and 12 above constitute unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

PLEASE TAKE NOTICE that on the 19th day of May, 1964, at 10:00 a.m. (Eastern Standard Time), in the U. S. Post Office and Courthouse, Savannah, Georgia, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the above Complaint, at [fol. 15] which time and place you will have the right to appear in person, or otherwise, and give testimony.

YOU ARE FURTHER NOTIFIED that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, Respondent shall file with the Regional Director, acting in this matter as agent of the Board, an original and four (4) copies of an Answer to said Complaint within ten (10) days from the service thereof, and that unless it does so, all of the allegations in said Complaint shall be deemed to be admitted to be true and may be so found by the Board.

Dated at Atlanta, Georgia, this 10th day of April, 1964.

(Signed) WALTER C. PHILLIPS
Regional Director
Tenth Region
National Labor
Relations Board
528 Peachtree-Seventh
Building
Atlanta, Georgia 30323

[SEAL]

[fol. 16] BEFORE THE
NATIONAL LABOR RELATIONS BOARD

October 25, 1963

Re: Case No. 10-CA-5518

Great Dane Trailers, Inc.
Lathrop Avenue
Savannah, Georgia

Gentlemen:

Please be advised that a Charge has been filed with this office alleging that you have engaged in unfair labor practices in violation of the National Labor Relations Act, as amended. Enclosed herewith you will find a copy of such charge for your notice and information.

The investigation of this matter has been assigned to Supervising Attorney Louis Lipsitz, whose address is shown above.

I would appreciate receiving from you a written statement of your position respecting the allegations set forth in the Charge. Please feel free to present in support of such statement affidavits and such records as may be necessary for full presentation of your position.

During the course of this investigation I will appreciate your cooperating fully with the members of this staff. In the event you desire any further information please [fol. 17] feel free to call upon the Supervisor handling this matter.

Very truly yours,

(Signed) WALTER C. PHILLIPS
Regional Director

Enclosures:

Charge (1) 435627
Notice (1)

REGISTERED MAIL
RETURN RECEIPT REQUESTED

[Certificate of service and acknowledgment
(omitted in printing)]

.
—
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER—Filed October 25, 1963

INSTRUCTIONS: File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No.

10-CA-5518

[fol. 20] Date Filed

10-25-63

1. Employer Against Whom Charge Is Brought

Name of Employer

Great Dane Trailers, Inc.

Number of Workers Employed

Approx. 400

Address of Establishment (Street and number, city, zone, and State)

Lathrop Avenue

Savannah, Georgia

Type of Establishment (Factory, mine, wholesaler, etc.)

Factory

Identify principal product or service

Trailers

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a), subsections (1) and (3) of the Na-

(List subsections)

tional Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

The Employer, in order to discourage membership in a labor organization, discriminated in regard to

[fol. 21] the hire and tenure of employment and to the terms and conditions of employment of all its production and maintenance employees since on or about May 17, 1963, and thereafter.

By these and other acts and conduct the Employer interfered with, restrained and coerced its employees in the exercise of their rights as guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charge (if labor organization, give full name, including local name and number)

International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local No. 26, AFL-CIO

4. Address (Street and number, city, zone, and State)
P. O. Box 1365, Birmingham, Alabama 35201

Telephone No.
Tr. 9-4497

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)

International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO

[fol. 22] 6. Declaration

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

(Signed) CLIFFORD L. STAVE
CLIFFORD L. STAVE
(Signature of representative
or person filing charge)
Staff Representative
(Title, if any)

October 22, 1963
(Date)

Willfully false statements on this charge can be punished by fine and imprisonment (U.S. Code, Title 18, Section 1001)

BEFORE THE
NATIONAL LABOR RELATIONS BOARD

TXD-392-64
Savannah, Ga.

TRIAL EXAMINER'S DECISION—July 15, 1964

* * *

This complaint¹ under Section 10(b) of the National Labor Relations Act, as amended (herein called the Act), heard before the undersigned at Savannah, Georgia, on May 19, 1964, involves allegations that Great Dane [fol. 23] Trailer, Inc. (herein called Respondent or Company), violated Section 8(a)(3) and (1) of the Act by discriminatorily refusing to pay certain employees vacation pay allegedly because they engaged in a strike and other concerted activities on behalf of International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers Local No. 26, AFL-CIO (herein called the Union or Local 26), and otherwise threatened, coerced, and restrained its employees in violation of Section 8(a)(1) of the Act. The General Counsel and Respondent participated fully in the hearing, and were afforded an opportunity to adduce evidence to examine and cross-examine witnesses, and argue orally on the record. Oral argument was waived. Briefs on behalf of the General Counsel and Respondent, respectively, have been received and duly considered.

Upon the entire record in the case, including my observation of the witnesses, I make the following:

Finding of Fact²

I. The unfair labor practice involved

A. Background

For some years the Union has been the collective-bargaining representative of the employees at Respond-

¹ Issued April 10, 1964, on a charge filed October 25, 1963.

² No issue of commerce or labor organization is presented. The complaint alleges and the answer admits the necessary factual averments in this regard. I find the facts as pleaded.

ent's Savannah, Georgia, plant. The last contract was effective by its terms, from April 1, 1960, through March 31, 1963, and thereafter from year to year, absent notice, [fol. 24] but terminable under certain circumstances upon 15 days' notice. Article VIII of this contract is entitled "Vacations," and contains the following provisions:

(a) Each qualified employee covered by this agreement shall be entitled after one (1) year of continuous employment, at a time agreeable to the Company, to a vacation of seven (7) consecutive days with pay for forty (40) hours at the rate of pay existing for such employee at the time of the beginning of his vacation. Each employee after five (5) years continuous service, shall be entitled to a vacation of fourteen (14) consecutive days, with pay for eighty (80) hours. Any employee entitled to a vacation with pay may waive the right, if his services are needed by the employer, to such vacation during the period of this agreement, and in such cases shall be entitled to receive in lieu thereof, at the time he becomes entitled to the vacation, the amount of vacation pay such employee would otherwise have received over and above the wages received for work performed during the vacation period.

(b) To qualify for said vacation, it is necessary that an employee shall have worked a total of fifteen hundred twenty-five (1525) hours in the said year; any time lost, however, because of an industrial accident while employed by this Company to count as part of the qualifying time.

[fol. 25] (d) Employees who have served less than sixty (60) days on the next July 1 after date of employment will receive no vacation pay on that date but on the following July 1 will receive the vacation due in accordance with the above qualifying requirements, plus extra amount due in accordance with hours worked.

(e) In case of lay-off, termination or quitting, employee who has served more than sixty (60) days shall receive pro rata share of vacation.

(f) All vacation pay shall be paid on Friday nearest July 1st, except as outlined in paragraph (d).

B. *Current Facts*

1. The vacation pay

On April 30,³ in accordance with its provisions, the Union gave Respondent notice terminating the then current contract, and on or about May 16, approximately 348 employees out of a total work force of about 400, went on strike and began picketing Respondent's plant. All parties concede that the strike was entirely economic in nature.⁴ By letters dated July 12, a great number of [fol. 26] the striking employees made demand on the Company for payment of the vacation pay allegedly due them under Article VIII of the aforementioned contract. Respondent admits the receipt of these letters. Except in the instances hereafter noted, which were apparently few in number, none of the striking employees received vacation pay in 1963, although it is admitted that such employees satisfied the conditions therefor, as set forth in the contract. Also under date of July 8, counsel for the Union wrote Respondent's plant manager asking when and where the men could secure the vacation pay allegedly due them under the contract. On July 12, Respondent's counsel replied to that letter taking the position, in substance, that because the Union had canceled the con-

³ This, and all dates hereafter mentioned are 1963, unless otherwise indicated.

⁴ The strike and picketing continued until December 26, at which time it was abandoned unconditionally, and the strikers made application to return to work. In the meantime the Company had replaced a number of the strikers. By July 1, about 259 had been replaced; by August 1, a total of about 325; by September 1, a total of about 339; by October 1, a total of about 442; and all strikers had been replaced by October 8. These so-called "replacements," however, included some strikers who abandoned the strike and returned to work. The number of these does not clearly appear. As a striker was replaced by a new employee, he was notified by the Company of his replacement by a permanent employee. Some of the strikers were rehired by the Company, apparently as new employees, after their replacement. The exact number of these does not appear.

tract, there was no contract in effect providing for the payment of vacation pay.⁵

Stephen Docie, a witness called by Respondent, who was at the time of these events its personnel director, admitted that vacation benefits were paid to all employees who did not strike on May 16 and who met the contract qualifications therefor, and were also paid to those who struck but abandoned the strike and returned to the job [fol. 27] before they had been replaced. The reason assigned by Docie for this was that in the case of the non-strikers it was company policy to pay vacation benefits to all qualifying employees who were on the job on July 1; and in the case of returning strikers who had not yet been replaced, there was no break in service. Plant Manager Granger testified, however, that the aforesaid payments to nonstrikers and to returning strikers, were not made pursuant to the contract because that had been canceled, but that subsequent to the cancellation it was necessary to have some rules concerning vacation pay, and that Respondent adopted rules which were substantially the same as those in the canceled contract.

2. The alleged independent 8(a)(1) statements

The essential testimony relating to this aspect of the case, offered by both the parties, will be set forth with respect to all of the incidents relied upon by the General Counsel. Credibility issues will be resolved in the concluding findings.

a. *The Vernon Barber incident*

Vernon Barber, a striker since May 16, who had been replaced in June, and who engaged in picketing Respondent, testified that in mid-November, he and W. E. Pierce, also a striker and picket, left the picket line to get lunch at a drive-in about a mile from the plant; at the table they were joined by Arthur Davis, a foreman, and admitted supervisor in Respondent's sheet metal depart-

⁵ The General Counsel also adduced some testimony concerning oral demands by some employees for the vacation pay allegedly due them. As this evidence is, for the most part controverted, it will be dealt with in a subsequent portion of this Decision.

ment; that he (Barber) asked Davis how production was going at the plant; that Davis replied it was "pretty bad" and offered Barber and Pierce a better job and more [fol. 28] money than they were making when they went out on strike, if they would return to work at the plant. Barber further testified that neither he nor Pierce had worked under Davis' supervision; that he did not think Davis was hard of hearing; that he did not ask Davis the nature of the job offered by the latter, or what the rate of pay would be. Pierce did not testify, nor is there any explanation for the failure to call him.

Davis, who is 70 years of age, and obviously has a substantial hearing impediment, testified that in obedience to instructions given him by management, he refrained from asking any employee to return to work, or making any promises in that connection; that he frequently had lunch at the drive-in, and on occasions saw many of the strikers there, to all of whom he spoke by a simple hello; that this may have included Barber, but had no specific recollection of seeing him; and denied offering Barber or Pierce a job, or promising them more money.

b. *The Edward Criswell incident*

Edward Criswell, an employee who joined the strike at its inception, testified that about a week after the strike began on May 16, and about a month prior to receiving notice of his replacement by the Company, he and fellow striker Pierce were picketing a temporary employment office which Respondent had established in downtown Savannah, and observed Personnel Manager Docie in the doorway to this employment office; that they approached Docie and he (Criswell) asked Docie for his vacation pay; that Docie replied, in substance, that if Criswell would return to work he would "give me my [fol. 29] vacation pay and more money"; and that he told Docie he would not cross the picket line to return to work. As heretofore pointed out, Pierce did not testify, and the record contains no explanation for the failure to call him.*

* Elzie West, a witness for the General Counsel, whose testimony will hereafter be more fully detailed, testified that he overheard

c. *The Elzie West incident*

Elzie West, also a striker, at first testified that about a week after the strike began and while picketing the temporary employment office on Congress Street, he overheard Criswell ask Docie about the vacation pay and that Docie replied, "If you will come back you will get your vacation pay." Later in his testimony, West added that Docie also offered "a better job, a supervision job." West also testified that in the conversation between Criswell and Docie, which he (West) had overheard, Docie told Criswell "the same thing that he told me."⁷

d. *The Inman Hagan incident*

Inman Hagan, also a replaced striker, testified that he went to Respondent's personnel office about the first week in August to check on his tools left in the plant when he went on strike; that he asked the receptionist about this and was told to come back after lunch. As he was leaving the personnel office Docie came out of his private office and he (Hagan), asked Docie about the vacation pay; [fol. 30] and that Docie replied, "It was tied up in a labor dispute but if I would come back to work I would get it."⁸

e. *The Robert Hathaway incident*

Robert Hathaway, an employee who went on strike on May 16, testified that on Saturday afternoon of the July 28 weekend, he met Docie at a liquor store on the outskirts of town, and after some preliminary conversation asked the latter if "we were ever going to get our vaca-

the conversation between Criswell and Docie on this occasion, and that Criswell was alone.

⁷ West does not attribute to Docie, as did Criswell, the statement that a return to the job would also mean "more money."

⁸ Hagan admitted that while he had gone to the plant for the purpose of seeing about his tools, he did not return after lunch as he had been told by the receptionist, and has not yet gotten his tools. He also stated that on this occasion Docie did not offer him a better paying job if he returned to work.

tion pay or was we ever going back to work," and that Docie replied, "If you come back to work all matters will be settled, financial and otherwise."

Docie testified that when the strike began, he was instructed by Company Counsel not to solicit any employee to return to work, or to make any promises regarding "fringe benefits or any favoritism"; that he followed these instructions "implicitly." He denied that he had any conversation with Criswell, West, Hagan, or Hathaway regarding vacation pay, as they had testified. Particularly in the case of Hagan and Hathaway, Docie testified that the conversation with them, at the time and place they indicated, was impossible because he was on Santa Belle Island, off the coast of Fort Meyers, Florida, spending his vacation, from July 28 to August 10.

[fol. 31]. f. *The Julian Grimes incident*

Julian Grimes, a striking employee, who had worked as a utility man on the assembly line, testified that about September 20, he met James Griner, manager of Respondent's service department, on the street in downtown Savannah, and asked Griner if he had any idea when the men would receive their vacation pay, and that Griner stated, in substance, that those men returning to work had received their vacation pay, and if he (Grimes) would come back to work he would get his vacation pay and "a better paid job." Grimes replied that he would not come back until the picketing had ceased.

Griner denied that any such conversation occurred, saying that Grimes did not work in his department, and he had not talked with him for some 3 or 4 years.

C. *Analysis and concluding findings*

1. The alleged 8(a)(3) violation

Respondent contends that this aspect of the case presents nothing more than an effort on the part of the employees to collect money allegedly due them under the terms of a collective-bargaining agreement. It argues that the employees should be left to their rights under

Section 301 of the Act, which rights, as the Supreme Court has held,⁹ may be enforced in either the State or Federal courts. Were this the theory of the General Counsel's case, I would agree with Respondent. "The Board is not the proper forum for parties seeking to remedy an alleged breach of contract or to obtain specific enforcement of its term" (*United Telephone Company of the West*, 112 NLRB 779, 782). To the same effect see *Association of Salaried Employees v. Westinghouse, etc.*, *supra*, at 437, footnote 2. The General Counsel's case, however, is premised on a broader base. His theory is that Respondent withheld vacation pay due employees under the contract, because of their membership in and activities on behalf of the Union, and because they engaged in concerted activities for the purposes of collective bargaining and other material aid and protection. If such was Respondent's purpose, the withholding of the vacation pay was plainly discriminatory, and a violation of Section 8(a)(3) and (1) because its natural and foreseeable effect was to discourage membership in the Union cf. *Krambo Food Stores*, 106 NLRB 870, 877, and was simply punishment for engaging in a strike against Respondent, a right protected by Section 7 of the Act. *N.L.R.B. v. Washington Aluminum Co.*, 370 U.S. 9. The issue, therefore, is factual, namely, whether Respondent withheld the vacation pay for the reason assigned by the General Counsel, or for some other reason or reasons unconnected with union membership or the concerted activities of the employees.

Respondent admits that all employees qualifying for vacation pay under the terms of the contract, and who did not go on strike, received their vacation pay about July 1, when it became payable under the terms of the contract; but not strikers received such payment even though he had fulfilled every contractual condition precedent. Its stated reason for pursuing this course was that [fol. 33] the contract had expired and hence imposed no obligation upon it to pay vacation benefits to anyone, and

⁹ See *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448; *Association of Salaried Employees v. Westinghouse, etc.*, 348 U.S. 437; *Smith v. Evening News Assoc.*, 371 U.S. 195.

that the payment to the nonstrikers was not pursuant to the contract, but pursuant to its unilaterally promulgated rules to pay such benefits to all employees at work on July 1, which unilaterally rules happened to coincide with the provisions of the expired contract. Respondent also admits that it paid vacation pay to each qualifying striker who abandoned the strike and returned to work prior to being permanently replaced, urging that permanently replaced strikers lost their status as "employees," and hence were entitled to no benefits. But these explanations do not withstand scrutiny. Stripped to its essentials, Respondent was in effect saying to all its employees refrain from joining the strike, or having joined it, abandoned the strike and return to work, and you will receive the vacation benefits due, but join or continue adherence to the strike, you will not receive the vacation benefits to which you would otherwise be entitled. Not only was the natural and foreseeable consequence of Respondent's conduct to discourage membership in the Union, but upon the entire record, I find and conclude that Respondent's intent and purpose was to retaliate against the strikers for having engaged in this concerted activity.

2. The alleged independent 8(a) (1) violations

I find the testimony offered by the General Counsel insufficient to establish the incidents above discussed. In short, I credit the testimony of Davis, Docie and Griner, and discredit that of Barber, Criswell, West, Hagan, Hathaway and Grimes. I am persuaded to this conclusion because of the several inconsistencies in the testimony of the General Counsel's witnesses.

[fol. 34] Vernon Barber "did not think" Foreman Davis was hard of hearing. That Davis is hard of hearing was perfectly evident to the undersigned, and if Barber in fact talked with Davis, it must have been perfectly evident to Barber. Also, I am at a loss to understand why Pierce, who allegedly was with Barber on the occasion in question, was not called as a witness, or why his failure to testify was not explained.

Criswell testified that Docie's promise was to give him (Criswell) his "vacation pay and more money." Not only

was Pierce, who allegedly was with Griswell, not called, but General Counsel's witness West, who allegedly overheard the conversation, testified that Docie told Criswell, "the same thing he told me." West at first testified that Docie's statement was simply a promise to give the vacation pay, but later stated that Docie also offered "a better job, a supervision job." Significantly, West did not support Criswell's statement that Docie offered Criswell "more money."

Having credited Docie with respect to the Criswell and West incidents, I also credit him with respect to the Hagan and Hathaway incidents.

With respect to Grimes' incident, it seems most unusual that Griner, a foreman in Respondent's Service Department, would discuss with an employee whom he knew only slightly, and who did not work in his department, a matter solely within the jurisdiction of the personnel department, particularly at a time when virtually all of the strikers had been replaced. Accordingly, I credit Griner.

For the reasons stated, I find and conclude that the [fol. 35] alleged independent Section 8(a)(1) violations have not been established, and will recommend that the allegations of the complaint in that regard be dismissed.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, I made the following:

Conclusions of Law

1. Respondent is an employer within the meaning of Section 2(2) of the Act, and is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The union is a labor organization within the meaning of Section 2(5) of the Act.

3. By withholding vacation pay from its employees as set forth in section B 1, above, Respondent engaged in, and is engaging in, unfair labor practices proscribed by Section 8(a)(3) and (1) of the Act.

4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

5. It has not been established by a preponderance of the evidence that Respondent solicited employees to aban-

don their strike and return to work, and promised them benefits if they would do so, and that allegation of the complaint should be dismissed.

[fol. 36]

The Remedy

Having found that Respondent has engaged in, and is engaging in, unfair labor practices, it will be recommended that it cease and desist therefrom and take certain affirmative action found necessary to effectuate the policies of the Act.

Having found that Respondent discriminatorily withheld from certain of its employees vacation pay for which they had qualified under the terms of the contract between Respondent and the Union, it will be required to pay to each such employee the vacation pay so withheld. The amount due to each such employee shall bear interest at the rate of 6 percent per annum from June 28, 1963, the date such vacation pay was payable under provisions of the applicable contract until paid.

It will also be recommended that Respondent shall, upon request, make available to the Board or its agents, for inspection and reproduction, all books and records necessary or helpful in determining the identity of the employee to whom vacation pay is due as herein provided, and in computing the amount thereof.

RECOMMENDED ORDER

Upon the foregoing findings of fact and conclusions of law, and upon the entire record in this case, pursuant to Section 10(c) of the National Labor Relations Act, as amended, I recommend that Respondent Great Dane Trailers, Inc., its officers, agents, successors and assigns, shall:

[fol. 37] 1. Cease and desist from:

(a) Without holding vacation pay from, or in any other manner-discriminating against its employees in regard to hire or tenure of employment, or any term or condition of employment, to encourage or discourage membership in any labor organization.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them be Section 7 of the Act.

2. Take the following affirmative action which, it has been found, is necessary to effectuate the policies of the Act:

(a) Forthwith pay to each employee on its payroll on May 15, 1963, who qualified for vacation pay under the terms of Article VIII of the agreement between Great Dane Trailers, Inc., and International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local No. 26, AFL-CIO, effective April 1, 1960, the vacation pay due on June 28, 1963, as provided in the aforesaid Article VIII; provided, however, that nothing herein shall be construed as requiring the payment of such vacation pay to any employee who has heretofore received such vacation pay for the contract year ending June 30, 1963.

(b) Post at its plant in Savannah, Georgia, copies of the notice attached hereto and marked "Appendix."¹⁰ [fol. 38]. Copies of said notice to be furnished by the Regional Director for the Tenth Region of the Board (Atlanta, Georgia), shall after being duly signed by its representative, be posted immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material. A copy of the aforesaid Appendix shall also be mailed by Respondent to each employee on its payroll on May 15, 1963, and who is not presently employed by it, at his or

¹⁰ If this Recommended Order is adopted by the Board, the words "A DECISION AND ORDER" shall be substituted for the words "THE RECOMMENDATIONS OF A TRIAL EXAMINER" in the notice. In the further event that the Board's Order is enforced by a decree of a United States Court of Appeals, the words "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER" shall be substituted for the words "A DECISION AND ORDER."

her last known address, and to the aforesaid Local No. 26.

(c) Upon request, make available to the Board and its agents, for inspection and reproduction, all books and records necessary or helpful in determining the identity of the employees to whom vacation pay is due as provided herein, and in computing the amount thereof.

(d) Notify the aforesaid Regional Director, in writing, within 20 days from the receipt of this Decision, what steps it has taken to comply herewith.¹¹

IT IS FURTHER ORDERED, that paragraphs 13 and [fol. 39] 14 of the complaint herein, as amended at the hearing, be, and the same are, dismissed.

Dated at Washington, D. C.
July 15, 1964.

(Signed) JOSEPH I. NACHMAN
JOSEPH I. NACHMAN
Trial Examiner

APPENDIX

NOTICE TO ALL EMPLOYEES PURSUANT TO THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board, and in order to effectuate the policies of the Labor Management Relations Act, you are hereby notified that:

WE WILL NOT withhold vacation pay from, or in any other manner discriminate against our employees in regard to hire or tenure of employment, or

¹¹ In the event that these Recommendations be adopted by the Board, this provision shall be modified to read: "Notify said Regional Director in writing within 10 days from the date of this Order what steps it has taken to comply herewith."

any term or condition of employment, to encourage or discourage membership in any union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization; to form, join, or assist unions, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities.

WE WILL pay to each employee on our payroll on May 15, 1963, who qualified for vacation pay under the terms of Article VIII of our contract with Local 26, which became effective April 1, 1960, and who has not heretofore received the same, the vacation pay due June 28, 1963, under the terms of the aforesaid contract.

GREAT DANE TRAILERS,
INC.
(Employer)

Dated By
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 528 Peachtree-Seventh Building, 50 Seventh Street, N. E., Atlanta, Georgia 30323 (Tel. No. 876-3311, Ext. 5357), if they have any question concerning this notice or compliance with its provisions.

[fol. 41] BEFORE THE
NATIONAL LABOR RELATIONS BOARD

EXCEPTIONS TO INTERMEDIATE REPORT No. 392-64
OF THE TRIAL EXAMINER

Comes now, Great Dane Trailers, Inc., a corporation, by its undersigned counsel and excepts to Intermediate Report No. 392-64 of the Trial Examiner dated July 15, 1964, and to all adverse findings, conclusions and decisions in said Intermediate Report, and to the adverse "Conclusions of Law", "The Remedy", the "RECOMMENDED ORDER" except for line 27, page 38 through line 2, page 39 thereof, and the "APPENDIX" attached to said "RECOMMENDED ORDER".

The Respondent further excepts to the following specific findings, conclusions, decisions, rulings and/or recommendations of the Trial Examiner in said Intermediate Report:

1. Respondent excepts to:

"... although it is admitted that such employees satisfied the conditions therefor, as set forth in the contract," (lines 7-9, page 26)

on the ground that such statement is ambiguous and misleading in that it implies that the contract was still in force, when it is admitted that it was not.

2. Respondent excepts to the first part of the "Analysis and Concluding Findings" which is devoted to "1. The alleged 8(a)(3) violation" thereof (line 20, page 31—line 26, page 32) on the grounds that said finding is not supported by the evidence, on the record as a whole, is contrary to the evidence, and is wholly erroneous in [fol. 42] that it involves the interpretation of a contract which, therefore, should be made the subject of an action under § 301 of the LMRA, rather than an 8(a)(3) charge. Respondent excepts to this finding by the Trial Examiner that the employer was unlawfully motivated in withholding vacation pay from the *replaced* strikers on the further ground that the Trial Examiner never did find that said replaced strikers *were entitled*, as a matter

of contract or otherwise to said vacation pay. This is entirely omitted from the Trial Examiner's Decision.

3. Respondent excepts to:

"Conclusions of Law

* * *

3. By withholding vacation pay from its employees as set forth in section B 1, above, Respondent engaged in, and is engaging in, unfair labor practices proscribed by Section 8(a)(3) and (1) of the Act," (line 10, and 20-23, page 35)-

on the same grounds as stated in exception # 2 above,

4. Respondent excepts to:

"The Remedy" and "RECOMMENDED ORDER" (line 1, page 36 — line 10, page 39) except for line 27, page 38 through line 2, page 39, thereof on the grounds that "The Remedy" and "RECOMMENDED ORDER" are based upon the third Conclusion of Law, quoted above, (which is objected to as stated above,) and on the further ground that said "RECOMMENDED ORDER" is [fol. 43] much broader than necessary to afford a complete remedy for the violation found.

5. Respondent excepts to the "APPENDIX" (attached to the Trial Examiner's Decision) on the grounds that it is based on the third Conclusion of Law, which is objected to as above stated.

HAMILTON & BOWDEN
(Signed) DAVID A. BARTHOLF
Attorneys for Respondent

Address of Counsel:
1056 Hendricks Avenue
Jacksonville, Florida

[Certificate of Service (omitted in printing)]

[fol. 44]

BEFORE THE
NATIONAL LABOR RELATIONS BOARD

AMENDED EXCEPTIONS TO DECISION AND REPORT
No. 392-64 OF THE TRIAL EXAMINER

* * *

Comes now, Great Dane Trailers, Inc., a corporation, by its undersigned counsel and excepts to the Decision Number 392-64 of the Trial Examiner dated July 15, 1964, and to all adverse findings, conclusions and decisions in said Intermediate Report, and to the adverse "Conclusions of Law", "The Remedy", the "RECOMMENDED ORDER" except for line 27, page 38 through line 2, page 39 thereof, and the "APPENDIX" attached to said "RECOMMENDED ORDER".

The Respondent further excepts to the following specific findings, conclusions, decisions, rulings and/or recommendations of the Trial Examiner in said Intermediate Report:

[fol. 45] 1. Respondent excepts to:

"... although it is admitted that such employees satisfied the conditions therefor, as set forth in the contract," (lines 7-9, page 26)

on the ground that such statement is ambiguous and misleading in that it implies that the contract was still in force, when it is admitted that it was not.

2. Respondent excepts to:

"C. Analysis and concluding findings"

1. The alleged 8(a)(3) violation

Respondent contends that this aspect of the case presents nothing more than an effort on the part of the employees to collect money allegedly due them under the terms of a collective-bargaining agreement. It argues that the employees should be left to their rights under "Section 301 of the Act, which rights, as the Supreme Court has held, [footnote omitted] may be enforced in either the State or Federal courts. Were this the theory of the General

Counsel's case, I would agree with Respondent. 'The Board is not the proper forum for parties seeking to remedy an alleged breach of contract or to obtain specific enforcement of its terms' (*United Telephone Company of the West*, 112 NLRB 779, 782). To the same effect see *Association of Salaried Employees v. Westinghouse, etc., supra*, at 437, footnote 2. The General Counsel's case, however, is premised on a [fol. 46] broader base. His theory is that Respondent withheld vacation pay due employees under the contract, because of their membership in and activities on behalf of the Union, and because they engaged in concerted activities for the purposes of collective bargaining and other material aid and protection. If such was Respondent's purpose, the withholding of the vacation pay was plainly discriminatory, and a violation of Section 8(a)(3) and (1) because its natural and foreseeable effect was to discourage membership in the Union cf. *Krambo Food Stores*, 106 NLRB 870, 877, and was simply punishment for engaging in a strike against Respondent, a right protected by Section 7 of the Act. *N.L.R.B. v. Washington Aluminum Co.*, 379 U S 9. The issue, therefore, is factual, namely, whether Respondent withheld the vacation pay for the reason assigned by the General Counsel, or for some other reason or reasons unconnected with union membership or the concerted activities of the employees.

Respondent admits that all employees qualifying for vacation pay under the terms of the contract, and who did not go on strike, received their vacation pay about July 1, when it became payable under the terms of the contract; but no striker received such payment even though he had fulfilled every contractual condition precedent. Its stated reason for pursuing this course was that the contract had expired and hence imposed no obligation upon it to pay vacation benefits to anyone, and that the payment [fol. 47] to the nonstrikers was not pursuant to the contract, but pursuant to its unilaterally promulgated rules to pay such benefits to all employees at work on July 1, which unilaterally [sic] rules happened

to coincide with the provisions of the expired contract. Respondent also admits that it paid vacation pay to each qualifying striker who abandoned the strike and returned to work prior to being permanently replaced, urging that permanently replaced strikers lost their status as "employees," and hence were entitled to no benefits. But these explanations do not withstand scrutiny. Stripped to its essentials, Respondent was in effect saying to all its employees refrain from joining the strike, or having joined it, abandoned [sic] the strike and return to work, and you will receive the vacation benefits due, but join or continue adherence to the strike, you will not receive the vacation benefits to which you would otherwise be entitled. Not only was the natural and foreseeable consequence of Respondent's conduct to discourage membership in the Union, but upon the entire record, I find and conclude that Respondent's intent and purpose was to retaliate against the strikers for having engaged in this concerted activity."

on the grounds that said finding is not supported by the evidence, on the record as a whole, is contrary to the evidence, and is wholly erroneous in that it involves the interpretation of a contract, therefore, which should be made the subject of an action under § 301 of the LMRA, rather than an 8(a)(3) charge. Respondent excepts to [fol. 48] this finding by the Trial Examiner that the employer was unlawfully motivated in withholding vacation pay from the *replaced* strikers on further ground that the Trial Examiner never did find that said replaced strikers were entitled, as a matter of contract or otherwise, to said vacation pay. This is entirely omitted from the Trial Examiners Decision.

3. Respondent excepts to:

"Conclusions of Law

* * *

3. By withholding vacation pay from its employees as set forth in section B 1, above, Respondent engaged in, and is engaging in, unfair labor practices

proscribed by Section 8(a) (3) and (1) of the Act," (line 10, and 20-23, page 35)

on the same grounds as stated in exception # 2 above.

4. Respondent excepts to:

"The Remedy"

Having found that Respondent has engaged in, and is engaging in, unfair labor practices, it will be recommended that it cease and desist therefrom and take certain affirmative action found necessary to effectuate the policies of the Act.

Having found that Respondent discriminatorily withheld from certain of its employees vacation pay for which they had qualified under the terms of the [fol. 49] contract between Respondent and the Union, it will be required to pay to each such employee the vacation pay so withheld. The amount due to each such employee shall bear interest at the rate of 6 percent, per annum from June 28, 1963, the date such vacation pay was payable under provisions of the applicable contract until paid.

It will also be recommended that Respondent shall, upon request, make available to the Board or its agents, for inspection and reproduction, all books and records necessary or helpful in determining the identity of the employees to whom vacation pay is due as herein provided, and in computing the amount thereof.

RECOMMENDED ORDER

Upon the foregoing findings of fact and conclusions of law, and upon the entire record in this case, pursuant to Section 10(c) of the National Labor Relations Act, as amended, I recommend that Respondent Great Dane Trailers, Inc., its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Withholding vacation pay from, or in any other manner discriminating against its employees in regard to hire or tenure of "employment, or any

term or condition of employment, to encourage or discourage membership in any labor organization.

[fol. 50] (b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them be Section 7 of the Act.

2. Take the following affirmative action which, it has been found, is necessary to effectuate the policies of the Act:

(a) Forthwith pay to each employees on its payroll on May 15, 1963, who qualified for vacation pay under the terms of Article VIII of the agreement between Great Dane Trailers, Inc., and International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local No. 26, AFL-CIO, effective April 1, 1960, the vacation pay due on June 28, 1963, as provided in the aforesaid Article VIII; provided, however, that nothing herein shall be construed as requiring the payment of such vacation pay to any employee who has heretofore received such vacation pay for the contract year ending June 30, 1963.

(b) Post at its plant in Savannah, Georgia, copies of the notice attached hereto and marked "Appendix." (footnote omitted) Copies of said notice to be furnished by the Regional Director for the Tenth Region of the Board (Atlanta, Georgia), shall, after being duly signed by its representative, be posted immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reason-
[fol. 51] able steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material. A copy of the aforesaid Appendix shall also be mailed by Respondent to each employee on its payroll on May 15, 1963, and who is not presently employed by it, at his or her last known address, and to the aforesaid Local No. 26.

(c) Upon request, make available to the Board and its agents, for inspection and reproduction, all

books and records necessary or helpful in determining the identity of the employees to whom vacation pay is due as provided herein, and in computing the amount thereof.

(d) Notify the aforesaid Regional Director, in writing, within 20 days from the receipt of this Decision, what steps it has taken to comply herewith.

[footnote omitted]

* * *

Dated at Washington, D. C. July 15, 1964.

JOSEPH I. NACHMAN
Trial Examiner

on the grounds that "The Remedy" and "RECOMMENDED ORDER" are based upon the third Conclusion of law, quoted above, (which is objected to as stated above,) [fol. 52] and on the further ground that said "RECOMMENDED ORDER" is much broader than necessary to afford a complete remedy for the violation found.

5. Respondent excepts to:

"APPENDIX

NOTICE TO ALL EMPLOYEES PURSUANT TO THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board, and in order to effectuate the policies of the Labor Management Relations Act, you are hereby notified that:

WE WILL NOT withhold vacation pay from, or in any other manner discriminate against our employees in regard to hire or tenure of employment, or any term or condition of employment, to encourage or discourage membership in any union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form,

join, or assist unions, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities.

WE WILL pay to each employee on our payroll on [fol. 53] May 15, 1963, who qualified for vacation pay under the terms of Article VIII of our contract with Local 26, which became effective April 1, 1960, and who has not heretofore received the same, the vacation pay due June 28, 1963, under the terms of the aforesaid contract.

GREAT DANE TRAILERS,
INC.
(Employer)

Dated By
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 528 Peachtree-Seventh Building, 50 Seventh Street, N. E., Atlanta, Georgia 30323 (Tel. No. 876-3311, Ext. 5357), if they have any question concerning this notice or compliance with its provisions."

on the grounds that is based on the third Conclusion of Law, which is objected to as stated above.

6. Respondent excepts to the failure of the Trial Examiner to allow Respondent to inquire whether or not one of the witnesses was under indictment for any crime at the time of the testimony (Tr. 21, line 21 through Tr. 22, line 23), on the ground that it is a basic rule of administrative law that evidence which would be technically inadmissible in a court proceeding can be admitted in an [fol. 54] administrative hearing for whatever value it may have under the theory that the hearing officer, being better trained and more intelligent than a jury, can distinguish between relevant and irrelevant testimonies and give proper weight and value to any border line testimony.

7. Respondent excepts to the Trial Examiner's allowing Counsel for the General Counsel to amend the Complaint at the hearing, over Respondent's objection, and without giving Respondent the time required by the rules to compose an Answer thereto. (Tr. 69, line 12 through Tr. 71, line 2) Rules and Regulations, National Labor Relations Board, as amended, Section 102.20.

8. Respondent excepts to the Trial Examiner's allowing hearsay testimony to be admitted over his objection (Tr. 80, line 18 through Tr. 81, line 14), while later disallowing the same testimony (Tr. 82, line 19 through Tr. 83, line 21).

9. Respondent excepts to the Trial Examiner's allowing Counsel for the General Counsel to amend the Complaint at the hearing on the same grounds and for the same reasons as alleged in exception # 7 above. (Tr. 84, line 14 through Tr. 85, line 14)

10. Respondent excepts to the Trial Examiner's sustaining the objection to Respondent's question "Have you ever been convicted of a crime?" (Tr. 90, line 24)

11. Respondent excepts to the refusal of the Trial Examiner to grant Respondent's Motion to Strike irrelevant testimony. (Tr. 93, line 11 through Tr 94, line 8).

[fol. 55] 12. Respondent further excepts to the entire conduct of the hearing by this Trial Examiner and all of the above adverse rulings on the ground that this Trial Examiner was prejudiced against the Respondent and against Respondent's Counsel, as more clearly appears from the abrupt and curt manner in which Respondent's Counsel was cut-off and in effect told to shut up on several instances when Respondent's Counsel was merely attempting to be helpful to the Trial Examiner. (Tr. 6, line 4 and Tr. 26, line 19)

HAMILTON & BOWDEN

(Signed) DAVID A. BARTHOLF

Attorneys for Respondent

Address of Counsel:

Hamilton & Bowden

1056 Hendricks Avenue

Jacksonville, Florida

[Certificate of Service (omitted in printing)]

[fol. 56] BEFORE THE
 NATIONAL LABOR RELATIONS BOARD

150 NLRB No. 55

D-6716
Savannah, Georgia

DECISION AND ORDER—December 16, 1964

* * *

On July 15, 1964, Trial Examiner Joseph I. Nachman issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the Decision attached hereto. The Trial Examiner also found that the Respondent had not engaged in other unfair labor practices alleged in the complaint. Thereafter, the Respondent filed exceptions to the Decision and a brief in support thereof.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel.

[fol. 57] The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed.¹ The rulings are hereby affirmed. The Board has considered the entire record in this case, including the Trial Examiner's Decision and the exceptions and brief, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations with the following additional comments.

We agree with the Trial Examiner that the denial of vacation pay to strikers who had not abandoned the strike by July 1, 1963, unlawfully discriminated against them because of their adherence to the Union's strike. Whether vacation pay was granted to those employees who were

¹ Respondent took exception to certain rulings of the Trial Examiner made at the hearing with respect to testimony relating to the independent violations of Section 8(a)(1) alleged in the complaint. In view of the Trial Examiner's dismissal of these allegations, to which the General Counsel has not excepted, it is apparent that no prejudice to the Respondent has resulted from such rulings.

actually working on July 1, pursuant to the provisions of the expired contract, or was granted, as the Employer contends, as a unilaterally adopted policy formulated after the expiration of the contract, is immaterial. Any striker who had not yet been permanently replaced was entitled, as an employee under Section 2(3) of the Act, to be treated in the same fashion as other employees. And even those strikers who had been permanently replaced before the date of payment of vacation benefits were entitled to a pro-rata share, either under Article VIII(e) of the expired contract, or under the unilateral policy of the Employer which admittedly adopted substantially the same provisions on eligibility.

[fol. 58] We are not hereby interpreting the contract for the parties, as the Employer contends, but are only holding that strikers must be treated uniformly with non-strikers with respect to whatever benefits accrue to the latter from the existence of the employment relationship.² Whatever problems may arise as to specific amounts due, or as to status, may be resolved at the compliance

As for the Employer's contention that an action for the payment of vacation benefits may only be brought under Section 301 of the Labor-Management Relations Act, our previous discussion and the Trial Examiner's Decision indicate that the Board's power to order reimbursement of vacation benefits to the strikers is based on the need to remedy the unfair labor practice committed, and not on their contractual rights, whatever they may be. The Board's jurisdiction to remedy unfair labor practices is not preempted by the possible existence of a contractual obligation arising from the same circumstances.³

² Cf. *General Electric Company*, 80 NLRB 510, where the accrual of future vacation benefits, based on the performance of services or its equivalent, was allowed to non-strikers but disallowed for strikers. Here, on the other hand, we are not awarding vacation pay to the strikers based on any period in which they were on strike, but are rather adopting the same eligibility requirements, such as total hours worked in the preceding year, as the Employer imposed on the non-strikers.

³ See *Local 174, Teamsters Union v. Lucas Flour Co.*, 369 U. S. 95, footnote 9.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the Board hereby adopts as its Order, the Order recommended by the Trial Examiner, [fol. 59] and orders that Great Dane Trailers, Inc., Savannah, Georgia, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

Dated, Washington, D. C. Dec. 16, 1964.

FRANK W. McCULLOCH,
Chairman

BOYD LEEDOM, Member
HOWARD JENKINS, JR.,

HOWARD JENKINS, JR. Member
National Labor
Relations Board

[SEAL]

[fol. 63] **BEFORE THE
NATIONAL LABOR RELATIONS BOARD
TENTH REGION**

Case No. 10-CA-5518

In the matter of:

**GREAT DANE TRAILERS, INC.
and**

**INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON
SHIP BUILDERS BLACKSMITHS, FORGERS AND HELPERS
LOCAL No. 26, AFL-CIO**

**Room 311, U. S. Post Office and
Courthouse,
Savannah, Georgia**

TRANSCRIPT OF HEARING—May 19, 1964

Pursuant to notice the above-entitled matter came on
for hearing at 10:00 o'clock a.m.

BEFORE:

JOSEPH I. NACHMAN, Trial Examiner.

APPEARANCES:

**O. R. T. BOWDEN, ESQ.
Messrs. Hamilton and Bowden,
1056 Hendricks Avenue,
Jacksonville, Florida**

**appearing on behalf of Great Dane Trailers, Inc.,
the Respondent.**

[fol. 64] **T. R. SOBIESKI, ESQ.
Tenth Region, National Labor Relations Board,
50 - 7th St.
Atlanta, Georgia,
appearing for General Counsel.**

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PROCEEDINGS

TRIAL EXAMINER NACHMAN: The hearing will be in order.

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COLLOQUY BETWEEN TRIAL EXAMINER AND COUNSEL

TRIAL EXAMINER: Before you do that suppose—let's have an opening statement.

MR. SOBIESKI: General Counsel intends to prove that Respondent's employees on or about May 17, 1963 went out on a strike.

TRIAL EXAMINER: Is there an issue as to whether it was economic or unfair?

MR. SOBIESKI: It is economic. This is not an issue in this case.

Of course the strike was preceded by a lengthy collective bargaining negotiations which did not result in an agreement, therefore the union felt they should strike, which they did.

[fol. 65] TRIAL EXAMINER: Strike to enforce plans?

MR. SOBIESKI: Yes, sir, and we intend to prove that during the course of the strike that various employees on strike asked supervisors for the Respondent for vacation pay. They were told that if they came back in off the strike they would get vacation pay. Also, we intend to prove that some of the people who engaged in the strike later returned to the company and received vacation pay. I think the pleadings set out that the people that did not strike did receive vacation pay. It is General Counsel's contention, based on the contract, these people are due the pay, however they have not received it.

TRIAL EXAMINER: Is there an issue before me that I have to interpret the meaning of the contract?

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MR. SOBIESKI: I would say that would be something that the Trial Examiner would have to interpret based on case law, also upon simple inference and justifiable inference that the people did not receive the vacation pay because they did engage in collective, concerted activity.

TRIAL EXAMINER: Are you arguing both points or one point, and if so, which?

MR. SOBIESKI: We are arguing both, sir. That the [fol. 66] contract specifies vacation pay is due, however, they did not get it and the Labor Board has issued a complaint charging a violation of Section 8(3) based on the fact that they were not paid the vacation pay.

TRIAL EXAMINER: The matter of contract interpretation is a matter the Board generally does not pass on.

MR. SOBIESKI: Sir. I would say generally speaking you are correct, however,—

TRIAL EXAMINER: That would be suit for monies due, wouldn't it?

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MR. SOBIESKI: That is, however, we have to mention the fact that the contract exists and there was a provision of vacation pay.

TRIAL EXAMINER: Would your position be the same if there were no contract if the company as a matter of practice over a long period of time had—

MR. SOBIESKI: Yes, sir, except it would be a lot tougher to prove. Here we have it in writing and it is a little easier. Just based on past practices we could get into quite a match.

* * *

[fol. 67] MR. BOWDEN: It is the position of the Respondent that the 8(a)(3) portion of this case involves the payment of vacation pay; the union, in a unilateral action, cancelled the agreement between Respondent and the Union on April 30th, 1963. Thereafter there was no contract in existence between the parties declaring the payment of any vacation pay thereafter.

TRIAL EXAMINER: Let me interrupt a moment. It is your position that there was a contract in effect calling for payment of vacation benefits and that contract was terminated by the union.

MR. BOWDEN: Terminated by the union.

TRIAL EXAMINER: By who ever, there is no obligation on the company to pay it.

MR. BOWDEN: That is right.

TRIAL EXAMINER: Continue.

MR. BOWDEN: The 8(a)(3) portion of this case is a matter of legal interpretation which should be instituted under Section 301 of Labor-Management Relations Act rather than litigated under the provisions of Section 8(a)(3). General Counsel would involve the Trial Examiner [fol. 68] in contract interpretation which would not be remedial in nature but instead would be in the nature of a penalty, alleged violation cognizable by the National Labor Relations Board are separate and apart from the alleged right purportedly arising from the contract. The Respondent contends that this forum is not the proper place to raise the question of vacation pay allegedly due under a contract cancelled by the Union which represented the employees.

TRIAL EXAMINER: I am inclined to agree with you, Mr. Bowden. The Labor Board does not sit as a collection agency.

What have you got to say on the other point that counsel takes? That these payments were withheld as a matter of retaliation against the employees because they went on a strike and therein lies discrimination?

MR. BOWDEN: The answer answers it. We had no contract and therefore we were not under any obligation at all to pay people who were not working.

TRIAL EXAMINER: Assume with me for a moment that you had no contract provision requiring you to pay, as a matter of practice you had done so for years and years. Let's assume I should find upon the evidence that these payments in this particular instance were withheld because employees went on strike. I take it you would agree that that would be an unfair labor practice?

MR. BOWDEN: No. That is a right that arises only [fol. 69] under a contract. This vacation, where they got any or anything else, where you had no contract I don't think that this court—that this hearing can say you should have paid under the contract whether you had one or not.

TRIAL EXAMINER: Assuming that there was no contract but this is a practice which had been going on for years.

MR. BOWDEN: I think my answer would be the same.

TRIAL EXAMINER: There would be no discrimination? That it was withheld because the employees went on strike?

MR. BOWDEN: That is right. On the cases I have found on this I find that none have been adjudicated by the National Labor Relations Board, there are many cases, of course, under Section 301 of the Act, on these fringes even before a strike and during a strike. The fact of the matter is I was interested in seeing a survey conducted and I can read you just briefly, and it might be appropriate at this time, on strike situations where the contract expires and the union strikes for a new contract, and I am reading from LRX Bureau of National Affairs, on vacations 52 companies did not permit the strikers to collect vacation pay while 34 companies paid under various circumstances, that is, they set a new vacation schedule where there might have been two and three weeks, they paid one, etc., but it shows there is no clear law even under Section 301 about the operation of fringes under the conclusion of a contract. I say that this court, [fol. 70] even if they found these allegations to be true, would require a company to post a notice, following the 8(a) (1) part of this case but they could not, in our opinion, interpret the contract or find that this company would be required to pay the strikers simply because some of them in the plant got paid, or require the payment of others on the same basis. In the first place, and I am assuming a different vacation schedule for those who had been there for one year and those who had been there for five, determine the amount of hours they should work to qualify and all of these other attendant matters that go into figuring vacation, all these things you would have to find.

TRIAL EXAMINER: Let me iron out one other thing. Would you agree that had this contract been in effect, had not been terminated, these employees would have been entitled to vacation pay?

MR. BOWDEN: If the contract had been in effect and they had otherwise qualified I think we would have been required to pay it, yes, sir.

TRIAL EXAMINER: I haven't read the contract provision yet. Let me look at that first.

MR. BOWDEN: It requires your interpretation of this contract and I think that is where it is not appropriate in this proceeding. If I may add, Your Honor, I don't know why this particular fringe was selected be-[fol. 71] cause this contract like all contracts has paid holidays, they have all the other things and these people apparently didn't feel like they had an enforceable contract on these others because they are not mentioned. Now, just why vacations were not—why this one item, vacations were selected out of the many is a little bit strange to me but in any event it is our position that if these people had a contract, they had a remedy, they had a grievance procedure and of course they have 301 suits for collection. We have put the union, through its legal representatives, on notice of our position as far as—as far back as a year ago through correspondence that we will introduce. This vacation pay was not mentioned then in any bargaining session even though the union was cognizant of it all the time. We feel if they have a right it is a proper matter for a 301 suit.

TRIAL EXAMINER: All right. You may proceed.

VERNON BARBER

was called as a witness by and on behalf of General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Sobieski)

* * * *

Q Will you tell me whether you ever worked for Great Dane, Mr. Barber? A Yes, I did.

[fol. 72] Q I will ask you when you worked there? A I went there in April of '57, I think.

Q What was your job? A Material expeditor and crane operation.

Q How long did you stay there? A I stayed there until May the 16th, 1963.

Q What happened on May 16th, 1963? A The Boilermakers' Union went on strike.

EXAMINER NACHMAN: And you went out on strike?

THE WITNESS: Yes, sir, that is right.

Q (By Mr. Sobieski) What happened during the strike, if anything, to let you know whether you had a job or didn't have a job? A The Company sent me a letter saying that I was replaced on my job, therefore, discharged.

Q Do you remember when the letter was sent to you, sir? A In June.

Q In 1963? A Yes, sir.

Q (continued) what happened with regard to vacation pay, now I am talking about you. What happened to you, the past practice. A I always got my vacation pay.

EXAMINER NACHMAN: Every year?

THE WITNESS: Every year. Every year around the first of July.

[fol. 73] Q (By Mr. Sobieski) Did you get any vacation pay in 1963? A No, sir.

Q What attempts, if any, have you made to get this vacation pay? A I signed the letter along with the rest of the people that was on strike and it was sent to the company, asking for my vacation pay.

Q I hand you what is marked General Counsel's Exhibit 3, could you tell us what this is?

(The document above referred to was marked General Counsel's No. 3 for identification.)

A Yes, sir, this is the letter we signed asking for our vacation pay.

Q Did you sign one of these, Mr. Barber? A Yes, sir, I did.

TRIAL EXAMINER: If I understand you, Mr. Barber, the man from the Union office gave you a form letter which you signed and that is all you know about it?

THE WITNESS: That is right.

HENRY HARDEN

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

[fol. 74] DIRECT EXAMINATION

Q (By Mr. Sobieski) State your name for the record, sir? A Henry Harden.

Q Will you tell us what your connection is with this case? A Business Manager for Boilermakers, Local 26.

Q Are you familiar with the strike that took place on May 16th, 1963? A Yes, sir.

* * * *

Q Did you have anything to do, besides this letter, with the strike? A Yes, sir.

Q Would you tell us what? A Well, there was a series of negotiating meetings—

TRIAL EXAMINER: You were trying to get a new contract?

THE WITNESS: Yes, we were in the process of negotiating a new contract.

Q (By Mr. Sobieski) Are you familiar with the recently expired contract, General Counsel's Exhibit No. 2? A Yes, sir.

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TRIAL EXAMINER: The contract was terminated?

THE WITNESS: Yes, sir.

[fol. 75] TRIAL EXAMINER: When was it terminated?

THE WITNESS: We ran the 45-day extension and it was June 16th—May 16th, midnight, I am sorry.

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Q (By Mr. Sobieski) Mr. Harden did you have anything to do with attempts by the employees to get their vacation pay? A Yes, sir.

Q Will you tell us what you did? A We wrote a form letter and had the people sign them and we mailed them to Great Dane by registered mail, return receipt requested.

Q Do you have any idea how many people signed these form letters? A I would—it would have to be a guess, I would say approximately 300.

Q I show you what has been marked as General Counsel's Exhibit No. 3, could you tell us what that is? A Yes, sir, I recognize that as the letter.

Q Is that the form letter that he striking employees signed, sir? A Yes, sir.

TRIAL EXAMINER: Excuse me. They didn't all sign this one piece of paper, each would sign a separate one?

THE WITNESS: Each one signed a separate one.

Q (By Mr. Sobieski) After a man signed one was it turned over to you? A They were turned over to me and were in turn mailed to Great Dane Trailers.

[fol. 76] Q Did you personally mail them, sir? A No, my secretary did.

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EDWARD D. CRISWELL

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Sobieski) State your name for the record. A Edward D. Criswell.

Q Will you tell us whether or not you ever worked for Great Dane? A Yes, sir.

Q Could you tell us when? A I started August '54 to December '62 and I went back in January of '63.

Q When did you last work? A May 16.

Q What happened at that time? A We called a strike.

TRIAL EXAMINER: You went out on strike.

Q (By Mr. Sobieski) Did you receive a notice that said you no longer worked for the company? A I got a letter from the company that I had been replaced by a permanent employee, that I had failed to report to work.

Q Do you remember when you got that letter, sir? A About a month and a half after the strike.

[fol. 77] TRIAL EXAMINER: Towards the end of June?

THE WITNESS: That is right.

TRIAL EXAMINER: In other words, what experience did you have?

THE WITNESS: About the vacation pay, we got vacation pay around the first of July, but if the week runs into July we finish out the week and it would be maybe the second or third of July.

CROSS EXAMINATION

Q (By Mr. Bowden)

Q This conversation that you had with Mr. Docie, you said it was about a week after the strike started?

A Yeah.

Q At that time you had not been replaced had you?

A No, I hadn't.

[fol. 78] Q Did—why did you get into that conversation with Mr. Docie about vacation pay if you had not been replaced and it was not July 1st, the normal time for you to receive vacation pay? How did you get into a discussion with him about vacation pay? A Well, I just thought I would ask him for my vacation pay.

Q Why? A I wanted it.

Q Why did you feel like you were entitled to it at that time? A Well, I know I wasn't entitled to it, but I just asked him for it.

Q Just asked him for it, no reason particularly. A No.

Q Even under past practices you were not entitled to it at that time. A No. Not until July.

Q This was just something extra that you decided to ask for, is that it? When you saw him that day? A Uh-huh.

TRIAL EXAMINER: It was normally paid around July the 1st, wasn't it?

THE WITNESS: Yes, sir.

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JULIAN C. GRIMES

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Sobieski) State your name. **A** Julian C. Grimes.

[fol. 79] **Q** Tell the hearing whether or not you ever worked for Great Dane, Mr. Grimes. **A** Yes, sir, I went out there 10-29-47.

Q How long did you work from that time? **A** Until we come out on strike on the 16th of May in '63.

Q What was your job at that time? **A** Utilityman.

Q Were you ever made aware that you were no longer an employee of Great Dane? **A** No, sir.

Q Did you receive a letter? **A** No, sir, I did not.

Q While you were working at Great Dane since 1947 in regards to you yourself would you tell us what the vacation policy was? **A** Well, it had always been paid around the first and Fourth of July, 'requiring' to our contracts.

Q Have you received vacation pay in past years, not counting '63, and you always got it around July 1st? **A** Yes, sir.

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ELZIE WEST

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Sobieski) State your name. **A** Elzie West.

Q Tell us whether or not you have worked at Great Dane, Mr. West? A Yes, I have.

Q Tell us when you began? A It was in July of 1951.

[fol. 80] Q What job did you have, sir? A I started out there as a helper and worked my way to mechanic.

Q How long did you work? When was the last time you worked at Great Dane. A When the strike occurred in '63, the 16th of June.

Q Are you sure it was June? A No, May. May the 16th.

Q Did you go out on strike at that time, Mr. West? A Yes, I did.

Q Were you ever notified that you no longer had a job at Great Dane? A Yes, I was notified by letter.

Q Do you remember when you received that letter? A It was about a week after we was out on strike.

Q You have testified that you worked at Great Dane since 1951, with regards to you yourself, would you tell the hearing what the vacation policy was? A Well, I was paid it prior to the Fourth of July, around the Fourth and the 1st.

Q Did you receive any vacation pay at that time during those years? A Yes, I did.

Q While on strike did you ever make any other efforts to get your vacation pay? A No, sir.

CROSS EXAMINATION

Q (By Mr. Bowden) Mr. West, when did you say you normally received your vacation? A Around the first of July.

[fol. 81] Q When was this conversation with Mr. Docie? A It was about a week after we was out on strike.

Q When would—where would that have been? A Up here on Congress Street.

Q When would that have been now? A I would say about the 20th, somewhere along in there.

Q Of May? A Uh-huh.

Q But under past practices you were not entitled to get it until July were you? A Yeah, I reckon so.

Q You reckon so, that is right, there is no reckoning about it, is there. When did you get your letter telling you that you had been discharged or replaced? A Uh—I don't remember the exact date. It was during that same week.

Q The same week? A Uh-huh.

TRIAL EXAMINER: Did you get the letter first or did you have this conversation first?

THE WITNESS: I think I had received my letter first.

Q Did you say you always got it in July? A Yeah.

Q Why was it due to you in May? A Well, it wasn't due to me in May.

Q It wasn't? A Uh-huh.

[fol. 82] Q It was due to you in July, wasn't it? A That's right.

INMAN D. HAGAN

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Sobieski) Sate your name for the record? A Inman D. Hagan.

TRIAL EXAMINER: Just a minute, please. Pretend there is a man sitting back there on the back row and you talk loud enough for him to hear you.

(By Mr. Sobieski) Mr. Hagan, will you tell the hearing whether or not you ever worked for Great Dane? A Yes, sir, I worked out there from May of '59 to '63.

Q What happened in 1963 that you are not working there anymore? A The Union went out on a strike.

Q Are you one of the strikers? A Yes, sir, I am.

Q How do—how did you know that you don't have a job at Great Dane anymore? A They sent me a slip saying that I was discharged.

Q Do you remember when you got that? A No, sir, I am not sure when I got it.

Q What month in relation to the strike? A It must have been about August.

Q While you were working at Great Dane before the strike in '63 in regards to yourself what was the vacation policy? A Around the first of July.

[fol. 83] Q What happened around the first of July? A They gave us vacation checks.

Q Now in 1963 did you get any vacation check? A No, sir, I didn't.

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MR. SOBIESKI: Mr. Bowden, General Counsel at this time would like to make a stipulation to the effect that Witness Hattaway, Robert E. Hattaway, J. R. Collins, J. F. Pearson and Charles Youman would all testify that they executed General Counsel's Exhibit No. 3, turned it over to the Union Officer in charge, Mr. Harden, in July, asking for their vacation pay.

TRIAL EXAMINER: In the month of July?

MR. SOBIESKI: Yes, it is dated. The month of July, 1963 and in regards to their employment all of those named worked at Great Dane at least three years if not more and had participated in the vacation policy in existence at the plant, having received vacation checks in the years they worked prior to the 1963 strike.

TRIAL EXAMINER: I think your stipulation should go a step further, that they never received answers to the letter and never received vacation pay for 1963.

MR. SOBIESKI: Yes, sir, and I will so add.

[fol. 84] MR. BOWDEN: I will accept his statement as to what they would testify.

TRIAL EXAMINER: You are stipulating that if the witnesses were called they would so testify?

MR. BOWDEN: I am not saying it is true, I am saying they would testify.

TRIAL EXAMINER: Would that conclude all the testimony that you are going to offer on that point?

MR. SOBIESKI: On that point, yes, sir. I will use these witnesses and get right to the point.

ROBERT HATTAWAY

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

CROSS EXAMINATION

Q (By Mr. Bowden) Mr. Hattaway, had you been discharged, replaced and discharged on this date, July 28th, 1963? A I can't be sure of the exact date.

Q It could have been after that? A It could've been.

[fol. 85] Q Well, being replaced and discharged was pretty important to you at that time in the month of July.

A That it was.

CHARLES F. YOUMENS

was called as a witness by and on behalf of General Counsel and, having been first duly sworn, was examined and testified as follows:

CROSS EXAMINATION

Q (By Mr. Bowden) When were you discharged? A Well, just like I said, within probably ten days. Within the ten day period after May the 16th I am sure, but I am not sure of the exact date.

ARTHUR DAVIS

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Bowden) What is your name, sir? A My name is Arthur Davis.

Q Where are you employed, Mr. Davis? A Do what?

Q Where are you employed? A Great Dane Trailers.

[fol. 86] Q What is your job there? A Oh, I am one of the old foremen out there.

Q At the time of the strike did you receive any instructions from the company about the way to conduct yourself during the strike? A Well, we went through one strike out there and on this last strike I received all kinds of instructions from you and the management as to the proper way to conduct yourself and I tried to carry that out to the letter.

Q What were you told? A I was told not to ask any of the employees to come back to work, one of the first things; not to be in contact with them no more than possible and not to promise them anything, that all of that would be handled through the personnel and through you and the management.

Q Did you follow your instructions? A Yes, sir.

JAMES A. GRINER

was called as a witness by and on behalf of Respondent and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Bowden) What is your name and address, please? A James A. Griner, 27 Noble Grand Drive, Savannah, Georgia.

[fol. 87] Q What is your position with Great Dane? A Service Manager.

Q How long have you had that position? A Since November 1946.

Q Mr. Griner, did you hold that job and were you in the plant during the period of time last year when the union was out on strike? A I was.

Q Did you and the other supervisors to your knowledge receive any instructions on how to conduct yourself during a strike? A We certainly did.

Q Would you tell us briefly what those instructions were? A We were instructed to conduct ourselves in a manner as not to contact any of the employees that were out on strike or have any conversations, if any questions were asked they were to be referred to the personnel department.

Q Did you do that? A I did that.

STEPHEN M. DOCIE

was called as a witness by and on behalf of Respondent and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Bowden) State your name and address? A Stephen M. Docie, 109 Windsor Road.

Q Where are you employed? A Unemployed currently.

[fol. 88] Q I see. Where were you formerly employed? A Great Dane Trailers.

What was your position with Great Dane during 1963? A I was the Personnel Director.

Q Were you present during 1963 at all the bargaining sessions between the company and the union? A Yes, sir, I was.

Q Do you recall when the strike was called by sion, bringing up the question of vacation pay, either before or after the strike? A No, I do not.

Q Did they? A No.

Q Do you recall when the strike was called by the union? A Midnight May—well, it was the 16th of May.

Q 1963? A 1963.

Q After the strike was called what steps did you take to recruit employees to replace strikers? A First of all I rented an office on Congress Street.

Q Was that street level building? A It was not an office, it was a store and we put furniture in there and telephones.

Q How long did you stay at that address? A Approximately one week, and then we rented another office in a realty building which was not on street level.

Q So you were only at the Congress Street address actually recruiting for about a week after the strike, from about the 17th to the 24th? A That is correct.

Q At the time of the strike or immediately before the strike did you receive any instructions on how to conduct yourself during a strike as a supervisor? A Yes. I [fol. 89] was told not to solicit any employees whatsoever in any manner, not to approach them, not to promise them anything in regards to either fringe benefits or any favoritism or anything else.

Q Did you follow those instructions? A Explicitly.

* * *

Q Do you have any knowledge of the distribution of vacation pay checks for 1963? A Yes, I do.

Q Will you tell the hearing where the people that did not go out on strike received the vacation pay? A Did

Q Did they? A Well, yes. They did.

Q Would you estimate what the number was of employees who got vacation pay that didn't go out on strike? A I would say approximately 35 or 40, the ones that didn't go out on strike.

Q That did not go out? A Yes.

Q Do you have any knowledge whether any people that initially went out crossed the picket line and came back to work, whether any of those people got vacation checks? A I would say yes, but I would like to qualify that. I may be wrong, there may be some but I don't know. I don't know exactly what you mean by that question.

Q I will try to explain and make it clear. The strike began May 16th, over 300 people walked out, is that correct? A That is correct.

Q Some, I think you said 50 or 60, didn't walk out. First of all did any of those people return to work? In

other words, cross the picket line and return to work [fol. 90] before the strike ended? Or, before they were replaced and discharged? A Yes.

Q Those people specifically, did they receive their vacation pay? A Yes, I believe so.

Q How many are in that group, sir, would you estimate? A Frankly, I have no knowledge of that.

Q Would you say it was upwards of about a dozen anyway? A You might be a little high, frankly.

Q How about eight? A Well, just for the sake of the record I will say eight, I don't know.

Q At least eight.

Do you have any idea when the vacation checks were issued? A 1963?

Q As to the people who walked out as well as to the people who walked out and then came back, what month? A I think it was in August.

Q You are familiar with this recently expired contract, General Counsel's Exhibit 2? A Yes.

TRIAL EXAMINER: Are you familiar with it?

THE WITNESS: Yes.

Q (By Mr. Sobieski) You wrote it didn't you? A I helped, yes.

Q Was the vacation pay usually paid in July? That is, based on that contract before the strike now in 1963?

A It was usually paid in that general area, depending on whether or not we closed down the last week of June or the—and first week of July or whether we closed down the first two weeks of July.

Q You would testify that the contract was followed, if not specifically, at least in a broad area with the ex-[fol. 91] ceptions you have just testified to as to the plant closing down a certain time? A That is the general vacation period, yes, sir.

TRIAL EXAMINER: Those people didn't go out on strike, did everyone who qualified under this contract generally receive vacation benefits?

THE WITNESS: To my knowledge, yes.

TRIAL EXAMINER: Everyone who qualified?

THE WITNESS: Everyone who qualified, that is correct.

* * *

TRIAL EXAMINER: There is testimony in the record that some people while the strike was in progress abandoned the strike and returned to work. Is that correct?

THE WITNESS: That is correct.

TRIAL EXAMINER: Of those people who abandoned the strike and returned to work, of those qualifying under the terms of that contract receive vacation pay?

[fol. 92] THE WITNESS: May I say this, if they were not discharged prior to returning to work I would say that they qualified and received their vacation pay because there were some of them who were discharged and still returned and still did not receive vacation pay at the particular time we gave vacations.

TRIAL EXAMINER: The criteria for the returning employees was whether they had been replaced by a permanent employee?

THE WITNESS: Correct.

TRIAL EXAMINER: Why did you pay the vacation benefits to the people who did not go out on strike, those who qualified and received it, why did you pay it to them?

THE WITNESS: We had a particular policy and they were entitled to it.

TRIAL EXAMINER: Because they didn't go out on strike?

THE WITNESS: No, because they were there as of July the 1st, that was our policy.

TRIAL EXAMINER: And the others were not entitled to it because they were not there on July the 1st?

[fol. 93] THE WITNESS: They were not working as of July the 1st, they were replaced and discharged, in other words they were not employees of ours.

TRIAL EXAMINER: How about the employees who had not been discharged and who had been out on strike and had returned to work? And did receive vacation pay. Why did you pay it to them?

THE WITNESS: Because there was no break in the length of service.

* * *

HARVEY GRANGER, JR.

was called as a witness by and on behalf of the Respondent and, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Bowden) What is your name and address? A Harvey Granger, Jr. 1508 Forsyth Road, Savannah, Georgia.

Q What is your position at Great Dane Trailers, Inc.? A Plant Manager.

Q Did you attend negotiation sessions between the company and union in 1963? A I did.

Q How many of those sessions did you attend? A All of them.

Q Do you know whether the company received notice [fol. 94] of contract termination from the union during 1963? A I do.

Q It has been introduced in evidence as Respondent's 1, thereafter did the union go out on strike? A They did.

Q How many employees, if you know, went out on strike? A May I consult my notes?

Q Yes. A Our records indicate approximately 348 went out on strike.

TRIAL EXAMINER: The total employment was?

THE WITNESS: Approximately 400, sir.

Q Prior to the strike or at the beginning of the strike did you give foremen and supervisors instructions on how to conduct themselves during the strike? A I did.

Q What did those instructions consist of? A We instructed them to have as little contact as possible with the strikers—the striking employees and not to say—under no conditions to say anything that could be even vaguely construed as solicitation to return to work.

Q You are talking about individual solicitation? A Yes.

Q Were these instructions followed? A As far as I know they were, they were repeated at frequent intervals as long as the strike lasted.

Q Did you thereafter commence to replace these economic strikers? A We did.

Q Could you tell us how many strikers had been re-
[fol. 95] placed by July 1st, 1963? A Yes, approximately 259.

Q Could you tell us how many strikers had been replaced by August 1st, 1963? A Approximately 325.

Q How many strikers had been replaced by September 1st, 1963? A Approximately 339.

Q How many had been replaced by October 1st, 1963? A Approximately 342. The final replacements were made by October 8th.

Q How many were replaced during that time? A Between October 1st and October 8th, there were six left.

Q All had been replaced by October 8th? A Yes.

Q Did you receive any requests from individual employees about their vacation pay? A Yes.

Q Was that in the form of letters? A We received a whole series of letters, the form letter that has already been introduced.

Q I see. Did you receive any formal requests for vacation pay? A Yes, there was an attorney who represented the union.

Q I will hand you Respondent's 2 for identification and ask you if that is the letter you refer to? A This is the letter to which I refer.

Q (By Mr. Bowden) What did you do with Respondent's Exhibit 2 when you received it? A I turned it over to you, Mr. Bowden.

Q Do you know if that letter was ever answered or not? A Yes, I received a copy of a letter that you wrote to Mr. Downing answering the letter.

[fol. 96] Q I hand you Respondent's Exhibit 3 for identification and ask you if that is what you refer to? A Yes, this is a copy of the letter to which I refer.

Q (By Mr. Bowden) Do you recall, Mr. Granger, if the vacation pay was ever discussed in the bargaining sessions with the union after the union had cancelled the contract? A It was not.

Q Even after this correspondence with Mr. Downing?

A It was not.

Q Was it discussed by the union? A It was not.

Q When did the strike cease? A The strike ceased on December 26th at midnight.

Q Did you receive a letter— A We had a letter from the Business Agent of the union a Mr. Harden.

Q I hand you Respondent's 4 for identification and ask you if that is what you refer to? A This is the letter.

* * *

Q Mr. Granger, with reference to these requests for vacation pay did you pay any striker vacation pay under the terms of the contract? A No, we did not.

Q Why didn't you? A Because the union had cancelled the contract at the time the strike began.

Q Did you feel any obligation to honor a contract term that had been cancelled? A No.

Q Subsequent to the cancellation of the union contract did you formulate any rules for employees who [fol. 97] were then working in the plant? A We did. We had to have some rules.

Q Were those rules substantially the same as you now have—as you had had under the old contract, the expired or cancelled contract? A They were.

* * *

Q (By Mr. Bowden) Do you know an employee by the name of Charles F. Youmans? A I do.

Q Did you ever have a conversation with Mr. Youmans about his status with you status with you or his rights A He called me on the telephone.

Q Did—will you identify the time if you can? A It was shortly after the strike and very shortly after we had sent Mr. Youmans a letter telling him that he had been replaced.

Q What did that call consist of? A He asked the status of his vacation pay.

Q What was he told? A He was told that we didn't know what—

TRIAL EXAMINER: You told him? **A** I told him that we did not know what was going on about vacation pay, but that if we owed it to him it would be paid.

Q Why was the policy—had you formed any policy at that time with reference to vacation pay? **A** We had turned it over to you for decision and an answer had not been given.

.

[fol. 98] **TRIAL EXAMINER:** The hearing is closed.

(Whereupon, at approximately 2:45 o'clock p.m., the hearing in the above-entitled matter was closed.)

.

BEFORE THE NATIONAL LABOR RELATIONS BOARD

GENERAL COUNSEL'S EXHIBIT No. 2

AGREEMENT

EFFECTIVE APRIL 1, 1960

THIS AGREEMENT, by and between GREAT DANE TRAILERS, INC. (hereinafter referred to as the Company) and INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS, LOCAL NO. 26, AFL-CIO (hereinafter referred to as the Union):

.

ARTICLE VIII

Vacations

(a) Each qualified employee covered by this agreement shall be entitled after one (1) year of continuous employment, at a time agreeable to the Company, to a vacation of seven (7) consecutive days with pay for forty (40) hours at the rate of pay existing for such employee at the time of the beginning of his vacation. Each em-
[fol. 99] ployee, after five (5) years' continuous service,

shall be entitled to a vacation of fourteen (14) consecutive days, with pay for eighty (80) hours. Any employee entitled to a vacation with pay may waive the right, if his services are needed by the employer, to such vacation during the period of this agreement, and in such cases shall be entitled to receive in lieu thereof, at the time he becomes entitled to the vacation, the amount of vacation pay such employee would otherwise have received over and above the wages received for work performed during the vacation period.

(b) To qualify for the said vacation, it is necessary that an employee shall have worked a total of fifteen hundred twenty-five (1525) hours in the said year; any time lost, however, because of an industrial accident while employed by this Company to count as part of the qualifying time.

(c) If an employee works less than 1525 hours who has been employed more than sixty (60) days, his vacation pay shall be based on the following schedule. If an employee has been continuously employed for five (5) years or more but has worked less than 1525 hours during the year preceding July 1, his vacation pay shall be twice the schedule in Column No. 2 below for number of hours worked:

[fol. 100]

Column No. 1 Hours of Service Within The Year	Column No. 2 Employees continuously employed more than 60 days but less than five years
1352 Hrs. to 1524 inclusive	27 Hrs.
1183 Hrs. to 1351 inclusive	23 Hrs.
1014 Hrs. to 1182 inclusive	20 Hrs.
841 Hrs. to 1013 inclusive	17 Hrs.
676 Hrs. to 844 inclusive	13 Hrs.
507 Hrs. to 675 inclusive	10 Hrs.
338 Hrs. to 506 inclusive	7 Hrs.
169 Hrs. to 337 inclusive	3 Hrs.

(d) Employees who have served less than sixty (60) days on the next July 1 after date of employment will

receive no vacation pay on that date but on the following July 1 will receive the vacation due in accordance with the above qualifying requirements, plus extra amount due in accordance with hours worked.

(e) In case of lay-off, termination or quitting, an employee who has served more than sixty (60) days shall receive pro rata share of vacation.

(f) All vacation pay shall be paid on Friday nearest July 1st, except as outlined in paragraph (d).

(g) All overtime hours are to be counted as straight time hours in computing qualifying time.

* * * *

[fol. 101]

ARTICLE XI

Seniority

In the event an employee is working at a higher classification on similar work, this shall be considered as prima facie evidence of superior ability.

(1) In all cases of permanent promotion, reduction in classification, layoff, re-call, length of continuous service shall govern between individual employees when, in the judgment of the Management, they are on substantially the same basis as to ability and efficiency; provided, that this selection may be carried through Step 3 of the grievance procedure, if desired by the union.

An employee filing a grievance concerning seniority in layoff and recall must name the employee he claims to hold seniority over in his written and signed grievance. The grievance will then be processed according to the provisions of Article IX of this agreement and will be judged in accordance with the provisions of this article.

* * * *

(3) An employee's length of service shall be broken and no prior service shall be counted if such employee:

- (a) voluntarily quits, or
- (b) is discharged for cause, or

- [fol. 102] (c) is laid-off and not recalled within one (1) year, or
- (d) is off two (2) days without notifying the Company; or
- (e) does not report for work when recalled unless within two (2) days, exclusive of Saturdays, Sundays and holidays, he presents an excuse acceptable to the Company, or
- (f) if an employee overstays his authorized written leave of absence.

ARTICLE XII

General

D. Any employee dismissed by the Company shall receive his wages and personal property within twenty-four (24) hours, Sundays and holidays excluded, provided that all charges for tools, equipment or advances shall be deducted from his last pay unless accounted for and turned in. Any employee quitting of his own accord shall receive his wages on the regular scheduled pay day for that period in which he works, provided that all equipment, tools and advances have been satisfactorily accounted for at that time.

[fol. 103]

ARTICLE XIV

Duration

A. This Agreement shall be effective from the 1st day of April, 1960, and shall continue in full force and effect to and including March 31, 1963. It is agreed that on the anniversary date of this Agreement, this contract may be opened for the purpose of discussing basic wage rates only. All other terms and conditions of this Agreement to remain in full force and effect for its term. Thereafter, this Agreement shall continue in full force and effect from year to year unless either party hereto shall notify the other in writing not less than sixty (60) days

prior to the expiration of the terms or any extended term of the Agreement, of an intent to modify or terminate this Agreement. After receipt of said notice, negotiations shall commence not later than thirty (30) days before the expiration of this Agreement or any renewal thereof, and if such modifications are not completed prior to the expiration of the term of this Agreement, it shall remain in effect for an additional period of thirty (30) days, after which it may be terminated by either party by giving fifteen (15) days' written notice to the other.

B. It is understood and agreed that in the event of the notice referred to in Paragraph A of the intention to modify this Agreement, that any disagreement or dispute arising therefrom shall not be subject to arbitration except by mutual written agreement of all parties.

[fol. 104] IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their signatures the day and year first above-written.

* * * *

BEFORE THE
NATIONAL LABOR RELATIONS BOARD

GENERAL COUNSEL'S EXHIBIT No. 3

Savannah, Georgia
July 12, 1963

Great Dane Trailers, Inc.
Lathrop Avenue
Savannah, Georgia
Attention: Mr. C. F. Hammond

Dear Sir:

Please consider this a demand that you pay my earned vacation pay in accordance with the Labor Agreement between the Company and the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers Local No. 26, effective April 1, 1960 through March 31, 1963, and that such vacation pay, which is now due, be paid me immediately.

Yours very truly,

HAH/m

cc: National Labor Relations Board
Atlanta, Georgia

[fol. 105]

BEFORE THE
NATIONAL LABOR RELATIONS BOARD

RESPONDENT'S EXHIBIT No. 1

International Brotherhood of
Boilermakers • Iron Ship Builders
Brotherhood Building
Subordinate Lodge No. 26

Date April 30, 1963
Blacksmiths • Forgers & Helpers
Kansas City 1, Kansas
Address of Writer Below

2201 Bay Street Extension
Savannah, Georgia

Great Dane Trailers, Inc.
Lathrop Avenue
Savannah, Georgia

Attention: Mr. Brook Reeve, Jr., Vice-President

Gentlemen:

In accordance with the provisions of Article XIV of the Labor Agreement between your company and our Union, we are, hereby, giving you fifteen days written notice of our intention to terminate said Agreement dated April 1, 1960 through March 31, 1963.

Sincerely,

(Signed) H. A. HARDEN
Business Manager-Secretary-
Treas.
Local 26

HAH/m

cc: C. W. Jones, IVP
R. K. Berg, IP

[fol. 106] BEFORE THE
NATIONAL LABOR RELATIONS BOARD

RESPONDENT'S EXHIBIT No. 2

Law Offices

Cowan, Zeigler, Downing & McAleer
Fourth Floor, Morel Bldg.
Bull and Bay Street
Savannah, Georgia

July 8, 1963

Telephone
236-4428

Richard T. Cowan
Frank B. Zeigler
Frank D. Downing
James E. McAleer

Mr. Harvey Granger,
Plant Manager
Great Dane Trailers, Inc.
Lathrop Avenue
Savannah, Georgia

Re: Vacation Pay

Dear Mr. Granger:

The undersigned is the legal representative for the International Brotherhood of Boilermakers, et al, Local # 26. Without setting forth any of the background of why these men are not now working for Great Dane, this communique is written only to ascertain when, where and how these employees can secure their vacation pay.

[fol. 107] If I understand the contract that was originally signed by Great Dane and the Brotherhood, the cut-off period for vacation is July 1st. The necessary hours have been worked to insure vacation pay. I can have these men come to the plant to receive their money but I would rather make arrangements to have them pick up same somewhere else. I can secure a Power of Attorney by the men would be delighted to pick up this money myself.

Will you please advise the writer as soon as possible your decision on the above. I think this is an obligation that should be taken care of without delay.

With kindest regards, I remain,

Very truly yours,

COWAN ZEIGLER,
DOWNING & M'ALEER
(Signed) FRANK O. DOWNING

POD:dbf

[fol. 108] BEFORE THE
NATIONAL LABOR RELATIONS BOARD

RESPONDENT'S EXHIBIT No. 3

July 12, 1963

Frank O. Downing, Esquire
Cowan, Zeigler, Downing & McAleer
Attorneys at Law
Fourth Floor, Morel Bldg.
Bull and Bay Streets
Savannah, Georgia

Re: Great Dane Trailers, Inc.

Dear Sir:

Your letter dated July 8, 1963, addressed to Mr. Granger in regards to the vacation pay has been forwarded to my office for reply.

Please be advised that the vacation pay which you discuss in your letter arose under a former union contract. For your information, the union canceled this contract on May 1, 1963. At the present time, the company has been negotiating with the union over the terms of a new contract; however, we do not have any contract in force at this time. There also remains an important problem of whether the discharged employees would be entitled to any

vacation if we still had a contract in force. However, these are not legal questions but are questions which should be resolved at the bargaining table. At our next [fol. 109] meeting with the union, we shall be happy to discuss the matter of vacation pay with the committee at that time.

Very truly yours,

O. R. T. BOWDEN

ORTB:lw

cc: Mr. Harvey Granger, Jr.
Mr. Brooke Reeve

BEFORE THE
NATIONAL LABOR RELATIONS BOARD

RESPONDENT'S EXHIBIT No. 4

2201 Bay Street
Savannah, Georgia

December 23, 1963

Mr. Brooke Reeve, Jr.
Vice President
Great Dane Trailers, Inc.
Lathrop Avenue
Savannah, Georgia

Dear Sir:

At a meeting held on December 21, 1963, by employees of Great Dane Trailers, Inc., who are on strike, it was voted you call the strike off. This is to advise that as of December 27, 1963, 1201 A. M., the strike at your plant is officially called off.

The employees, shown on the attached list, hereby individually make an unconditional request and apply for

[fol. 110] reinstatement to their former or substantially equal positions. These men are immediately available for reinstatement and are ready, willing and able to work.

In addition to this formal request the individuals named on the attached list will make a personal appearance to apply for reinstatement and to reaffirm their request for unconditional reinstatement. Such personal appearances will be made on December 27, 1963, and shortly thereafter.

Very truly yours

(Signed) H. A. HARDEN
Business Manager
Local No. 26

HAH/go

CC: W. C. Phillips NLRB
General Council NLRB
Georgia Department of Labor
R. K. Bergio
C. W. Jones, IVP
C. L. Syave Sr.
O. R. T. Bowden

[fol. 111] BEFORE THE
NATIONAL LABOR RELATIONS BOARD
Tenth Region

Case No. 10-CA-5518

In the matter of:

GREAT DANE TRAILERS, INC.

and

INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON
SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS
LOCAL NO. 26, AFL-CIO

Room 311, U. S. Post Office and
Courthouse
Savannah, Georgia

TRANSCRIPT OF HEARING—May 19, 1964

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[fol. 112] HENRY HARDEN

was called as a witness by and on behalf of the General
Counsel and, having been first duly sworn, was examined
and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Sobieski) State your name for the record,
sir?

A Henry Harden.

Q Will you tell us what your connection is with this
case?

A Business Manager for Boilermakers, Local 26.

Q Are you familiar with the strike that took place
on May 16th, 1963?

A Yes, sir.

.

[fol. 113] Q (By Mr. Sobieski) Do you know whether
the striking employees ever got their vacation pay?

A Not to my knowledge.

MR. SOBIESKI: No further questions.

TRIAL EXAMINER: Is there any question that they didn't get it?

MR. BOWDEN: No.

* * * *

[fol.114] HARVEY GRANGER, JR.

was called as a witness by and on behalf of the Respondent and, having first been duly sworn, was examined and testified as follows:

* * * *

[fol. 115] CROSS EXAMINATION

Q (By Mr. Sobieski) Mr. Granger how long have you been worked at Great Dane as plant manager?

A I have been plant manager since 1960, '60 or '61.

Q When you came there was this contract already in force?

A When I became plant manager, yes, but I had been there previous to that. I had nothing to do with industrial relations.

A As plant manager then is it true that you are familiar with the particular article in that contract, which is article 8, which deals with vacation pay?

A Yes. I can't swear to you that it is article 8, but I am familiar with the vacation article.

I will take your word for it.

Q Look at that.

A Yes, I am familiar with that article 8, vacations.

Q Could you tell the hearing what the policy is re-
[fol.116] garding employees that are either discharged or quit or leave for reasons of their own?

A The policy under this schedule?

Q Under this contract.

A If when they left they were paid accrued vacation pay it is in paragraph E of Article 8.

Q That is whether they were discharged for just cause or whether they just quit or whatever the reason might be?

A Correct.

* * * *

[fol. 117] BEFORE THE
NATIONAL LABOR RELATIONS BOARD

GENERAL COUNSEL'S EXHIBIT No. 2

AGREEMENT

between

GREAT DANE TRAILERS, INC.

and the

International Brotherhood of Boilermakers, Iron Ship
Builders, Blacksmiths, Forgers and Helpers
Local No. 26

[Union Label]

Effective April 1, 1960
SAVANNAH, GEORGIA

[fol. 118]

ARTICLE XI

Seniority

* * * *

(1) In all cases of permanent promotion, reduction in classification, layoff, re-call, length of continuous service shall govern between individual employees when, in the [fol. 119] judgment of the Management, they are on substantially the same basis as to ability and efficiency; provided, that this selection may be carried through Step 3 of the grievance procedure, if desired by the union.

* * * *

[fol. 120] (4) The Company agrees to furnish the Business Representative and the Chief Steward of the Union a list of all employees with seniority annually, one month after the anniversary date; on the 15th of the month, to furnish the Union the names of all employees added to

the seniority list during the previous month as provided in 2, and all persons whose seniority was broken for the reasons listed in 3 of this Article. The Company agrees to notify the Chief Steward as soon as possible when an employee is discharged for cause. The Company also agrees to furnish the Chief Steward of the Union with a change of status notification when an employee is promoted to another classification.

[fol. 121]

IN THE
UNITED STATES COURT OF APPEALS

No. 22427

MINUTE ENTRY OF ARGUMENT AND SUBMISSION—
February 8, 1966

[Title Omitted]

On this day this cause was called, and after argument by Elliott Moore, Attorney, N.L.R.B. for Petitioner, and by O.R.T. Bowden, Esq., for Respondent, was submitted to the Court.

[fol. 122]

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 22427

NATIONAL LABOR RELATIONS BOARD, PETITIONER
versus

GREAT DANE TRAILERS, INC., RESPONDENT

*Petition for Enforcement of an Order of the National
Labor Relations Board, sitting at Washington, D. C.*

OPINION—June 24, 1966

Before RIVES and GEWIN, Circuit Judges, and
ALLGOOD, District Judge.

GEWIN, Circuit Judge: This case is before the Court upon the petition of the National Labor Relations Board (Board) for enforcement of its order issued against Respondent, Great Dane Trailers, Inc. (Company) to cease and desist from certain activities found by the Board to be violative of Section 8(a) (3) and (1) of the National [fol. 123] Labor Relations Act, 29 U.S.C.A. § 158(a) (3) and (1). The case is reported at 150 NLRB No. 55.

For a number of years the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local No. 26, AFL-CIO (Union) has been the collective bargaining representative of the employees at the Company's Savannah, Georgia, plant. The last contract between the Union and the Company was effective by its terms until March 31, 1963, and from thereafter until unilateral termination by either party upon 15 days notice. The contract contained the following pertinent provisions:

"(a) Each qualified employee covered by this agreement shall be entitled after one (1) year of continuous employment, at a time agreeable to the Company, to a vacation of seven (7) consecutive days with pay for forty (40) hours at the rate of pay existing for such employee at the time of the beginning of his vacation. Each employee after five (5) years continuous service, shall be entitled to a vacation of fourteen (14) consecutive days, with pay for eighty (80) hours. Any employee entitled to a vacation with pay may waive the right, if his services are needed by the employer, to such vacation during the period of this agreement, and in such cases shall be entitled to receive in lieu thereof, at the time he becomes entitled to the vacation, the amount [fol. 124] of vacation pay such employee would otherwise have received over and above the wages received for work performed during the vacation period.

"(b) To qualify for said vacation, it is necessary that an employee shall have worked a total of fifteen hundred twenty-five (1525) hours in the said year; any time lost, however, because of an industrial accident while employed by this Company to count as part of the qualifying time.

"(d) Employees who have served less than sixty (60) days on the next July 1 after date of employment will receive no vacation pay on that date but on the following July 1 will receive the vacation due in accordance with the above qualifying requirements, plus extra amount due in accordance with hours worked.

"(e) In case of lay-off, termination or quitting, employee who has served more than sixty (60) days shall receive pro rata share of vacation.

"(f) All vacation pay shall be paid on Friday nearest July 1st, except as outlined in paragraph (d)."

On April 30, 1963, the Union gave notice terminating the contract, and on May 16 approximately 348 of the Company's 400 employees went on strike.

[fol. 125] On July 12, 1963, a large number of striking employees demanded vacation pay allegedly due them under the provisions of the contract quoted above. The Company responded that since the formal contract with the Union had been terminated, it had unilaterally altered Company "policy" regarding vacation pay and that only those employees who were on the job July 1 of that year would receive any benefits. In the case of returning employees who had not been replaced, there was no break in service. The Company emphasized that while it had adopted substantially all of the vacation pay provisions of the prior contract, it was not granting vacation pay pursuant to that contract. It is admitted that vacation benefits were actually paid to all employees who met the contract qualifications but either did not strike on May 16, or abandoned the strike and returned to work before they were replaced.

In October 1963, the Union filed a complaint with the Board charging the Company with violation of Section 8(a) (3) and (1) of the Act by refusing to grant vacation pay due the striking employees under the terms of the contract because of their adherence to the Union's strike.

During the subsequent hearing before the trial examiner, the Company took the position that the contract giving the employees the right to vacation pay was no longer in effect and that even if it were still in effect, the Board could not properly exercise its jurisdiction to [fol. 126] construe and enforce its terms, since such jurisdiction rests in state and federal courts by virtue of Section 301 of the Labor-Management Relations Act, 29 U.S.C.A. § 185(a).¹ The hearing examiner concluded that the refusal to give vacation pay constituted a Section

¹ § 185(a):

"Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

8(a)(3) and (1) violation and recommended an order requiring the payment of such benefits. The Board reviewed the proceedings and adopted the conclusions of the trial examiner for the following reasons:

"We agree with the Trial Examiner that the denial of vacation pay to strikers who had not abandoned the strike by July 1, 1963, unlawfully discriminated against them because of their adherence to the Union's strike. Whether vacation pay was granted to those employees who were actually working on July 1, pursuant to the provisions of the expired contract, or was granted, as the Employer contends, as a unilaterally adopted policy formulated after the expiration of the contract, is immaterial. Any striker who had yet been permanently replaced was entitled, as an employee under Section 2(3) of the Act, to be treated in the same fashion as other employees. [fol. 127] And even those strikers who had been permanently replaced before the date of payment of vacation benefits were entitled to a pro-rate share, either under Article VIII(e) of the expired contract, or under the unilateral policy of the Employer which admittedly adopted substantially the same provisions on eligibility."

The Company here contends the Board erred because (1) its decision and order were necessarily grounded upon the construction of a collective bargaining agreement, and enforcement by the Board of a labor contract is contrary to the policies of the Act; and (2) alternatively, there was insufficient evidence to sustain the finding that the Company was motivated by anti-union sentiment in refusing to distribute the vacation pay benefits allegedly owed the striking workers.

We first turn to the question of whether the Board acted improperly by exercising its jurisdiction over this matter. The Company has consistently asserted that its policy of granting vacation pay is a purely unilateral action taken without any reference to the now-terminated collective bargaining contract. It is undisputed that such a "policy" is a "term or condition of employment" as described by Section 8. Those striking employees who had

not been replaced are definitely "employees" within the [fol. 128] meaning of Section 152(3) of 29 U.S.C.A.² Therefore, if it is alleged that the Company discriminated between striking and non-striking "employees" in regard to the "term or condition of employment" as proscribed by Section 8(a)(3) and (1), the Board clearly acted properly in exercising its authority to hold an inquiry and effect an appropriate remedy, if one is warranted, since this is an unfair labor practice charge in simplest terms. Thus, we can disregard the question of whether the Board *would* have acted improperly in exercising its jurisdiction to decide whether it was an unfair labor practice to withhold benefits due *under the contract*,³ or whether such action would have violated the policies of the Act.

We next turn to the substantive issue of whether the Board had sufficient evidence to conclude the Company was motivated by anti-union sentiment in withholding vacation pay in violation of Section 8(a)(3) and (1). As the Supreme Court said in *American Shipbuilding Co. v. N.L.R.B.*, 13 L.Ed.2d 855, 863 (1965):

"Section 8(a)(3) prohibits discrimination in regard to tenure or other conditions of employment to discourage union membership. Under the words of the [fol. 129] statute there must be both discrimination and a resulting discouragement of union membership. It has long been established that a finding of violation under this section will normally turn on the employer's motivation. See *Labor Board v. Brown*, 380 US 278, 13 L. ed 2d 839, 85 S Ct 980; *Radio Officers' Union v. Labor Board*, 347 US 17, 43, 98 L ed 455,

² The Record shows that as many as 75% of the striking employees had been replaced by July 1.

³ The Company contends that the Board "changed horses" on the jurisdictional question since the *complaint* alleged that the unfair labor practice arose by failure to pay benefits due *under the contract*. Parties to an unfair labor practice charge are not to be held to strict rules of pleading, since the purpose of the complaint is merely to set in motion the machinery of an inquiry. *N.L.R.B. v. Fant Mill Co.*, 3 L.Ed.2d 1243 (1959); *N.L.R.B. v. W. R. Hall Distributor*, 341 F.2d 359 (10 Cir. 1965).

478, 74 S Ct 323, 41 ALR2d 621; *Labor Board v. Jones & Laughlin Steel Corp.*, 301 US 1, 46, 81 L ed 893, 916, 57 S Ct 615, 108 ALR 1352."

Furthermore, the Court has required an "affirmative" showing by the Board of unlawful "motivation," *Local 357, International Brotherhood of Teamsters v. N.L.R.B.*, 6 L.Ed.2d 11 (1961); and, as we have often said, "an unlawful purpose is not lightly to be inferred," *N.L.R.B. v. McGahey*, 233 F.2d 406 (5 Cir. 1956).

The sole act of the Company upon which the Board made its finding of anti-union sentiment was the refusal to pay the vacation benefits. In effect, the Board held this act to be an ipso facto, per se violation. There was no supporting evidence whatsoever. To the contrary, the Board itself adopted the hearing examiner's conclusion in favor of the Company in a companion 8(a)(1) charge. There was also evidence presented in the hearing that the Company had gone to some lengths to avoid illegal em-[fol. 130] ployee pressuring.⁴ Moreover, the Company contends it has never before been involved in an unfair labor practice controversy, and there is no record evidence that it has ever been so involved.⁵ We can narrow the question, therefore, to whether the act of withholding the benefits is *by itself* sufficient evidence of unlawful motive. The Supreme Court confronted substantially the same issue in *American Shipbuilding, supra*, and stated the following at 13 L.Ed.2d 863-4:

"But we have consistently construed the section to leave unscathed a wide range of employer actions taken to serve legitimate business interests in some significant fashion, even though the act committed may tend to discourage union membership. See, e.g., *Labor Board v. Mackay Radio & Telegraph Co.* 304

⁴ The Hearing Examiner reported the following in his Decision:

"Docie [Personnel Manager of Company] testified that when the strike began, he was instructed by Company Counsel not to solicit any employee to return to work, or to make any promises regarding 'fringe benefits or any favoritism'; that he followed these instructions 'implicitly.'"

The Trial Examiner credited this testimony.

US 333, 347, 82 L ed 1381, 1391, 58 S Ct 904. Such a construction of § 8(a) (3) is essential if due protection is to be accorded the employer's right to manage his enterprise. See *Textile Workers v. Darlington Mfg. Co.* 380 US 263, 13 L ed 2d 827, 85 S Ct 994.

"This is not to deny that there are some practices which are inherently so prejudicial to union interests [fol. 131] and so devoid of significant economic justification that no specific evidence of intent to discourage union membership or other antiunion animus is required. In some cases, it may be that the employer's conduct carries with it an inference of unlawful intention so compelling that it is justifiable to disbelieve the employer's protestations of innocent purpose."

Thus, we must decide whether the Company's withholding of vacation pay "carries with it an inference of unlawful intention so compelling that it is justifiable to disbelieve the employer's protestations of innocent purpose." (Emphasis added). We find that it does not. Based upon the term "so compelling", we conclude that if the "employer's conduct" carries with it *any other* reasonable inferences of a *legitimate motive*, the inference of illegality does not control. Although the record does not reveal any such alternative motives, we find it reasonable to infer that the Company might have acted (1) to reduce expenses; (2) to encourage longer tenure among present employees; or (3) to discourage early leaves immediately before vacation periods. We see nothing irregular about the failure of the Company to come forward with such evidence, although it might have benefitted their cause. The burden of proving motivation is on the Board. *N.L.R.B. v. McGahey, supra*, at 411.⁵ When viewed in the light of the

⁵ As we stated in *McGahey* at 411:

"Each was a perfectly sufficient explanation for the discharge of the particular employee and would itself sustain the burden, if it rested upon the employer, that the discharge of each was for the stated reasons. But the employer does not bear this duty. It is, rather on the General Counsel to establish by acceptable substantial evidence on the whole record that discharge came from the forbidden motives of interference in

[fol. 132] strong evidence showing otherwise exemplary conduct on the part of the Company during the strike, the argument favoring the inference of illegality becomes increasingly weaker.

There remains the question, whether judged by the standards announced in *Oil City Brass Works v. NLRB*, 357 F.2d 466 (5 Cir. 1966), there is substantial evidence in this record as a whole to support a factual finding that these acts were improperly motivated.

This case may be compared to *Bi-Rite Foods, Inc.*, 1964 CCH NLRB Cases ¶ 12,132, 147 N.L.R.B. 59 (1964). In that case the company offered certain benefits but the Union turned them down, electing instead to strike. "The employer sent a letter to strikers, giving the date he would replace strikers if they did not return. He also stated that on that date he would put into effect the wage, holiday, and vacation offer, he made before the strike. Eight or nine strikers out of the twenty-eight or twenty-nine returned to work, and the employer put the changes [fol. 133] into effect." 1964 CCH NLRB Cases ¶ 13,132 at 20, 941. The conduct in *Bi-Rite Foods, Inc.* was held not to constitute a refusal to bargain and, thus, not to be an unfair labor practice.

In the instant case essentially the same type of conduct took place. The terms of the vacation pay agreement were essentially the same as those the Union turned down as insufficient when it terminated the old contract. The fact that they applied only to employees who returned to work by July 1 is no more coercive than the implementation of new benefits in *Bi-Rite Foods, Inc.* In fact, it was not until July 12 that it became apparent the company would not pay the allegedly due benefits.

At the time the company refused to pay, a real question existed as to whether the replaced employees were

employee statutory rights. The burden long imposed by this Court, *N.L.R.B. v. Miami Coca-Cola Bottling Co.*, 5 Cir., 222 F.2d 431; *N.L.R.B. v. Brady Aviation Corp.*, 5 Cir., 224 F.2d 23; *N.L.R.B. v. Alco Feed Mills*, 5 Cir., 133 F.2d 419; *N.L.R.B. v. Tex-O-Kan Flour Mills*, 5 Cir., 122 F.2d 433; *N.L.R.B. v. Ray Smith Transport Co.*, 5 Cir., 193 F.2d 142, had added sanction by express terms of the Act."

entitled to those benefits. Two means existed for settling that issue. One, the Union could have bargained over the exact rights of employees. Two, the employees affected could have brought suit under section 301.

This is not a refusal to bargain, but is a case where the employer was accused of discouraging union membership. Certainly its assertion of a contested right in this case is no more coercive than the replacing of economic strikers. Yet no one could contend that that violated section 8(a) (3) and (1).

This Board proceeding is devoid of circumstantial evidence on which to base an inference of improper motive. [fol. 134] Nor is this the type of situation which the Board has seen so often that it can draw on a background knowledge of what is the usual intent of the employer. The complete absence of any primary facts on which an inference of improper motive can be based requires the conclusion that there is no substantial evidence in the record as a whole to support the Board's finding.

Having concluded, therefore, that there are insufficient facts shown by the record to support an inference of unlawful motivation; and that there is no substantial evidence in the record as a whole to support the conclusion that the Company violated Section 8(a) (3) and (1) of the Act, the petition for enforcement is DENIED.

[fol. 135]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 22427

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

GREAT DANE TRAILERS, INC., RESPONDENT

DECREE—July 21, 1966

Before: Rives and Gwin, Circuit Judges, and Allgood,
District Judge.

BY THE COURT:

THIS CAUSE came on to be heard upon the petition of the National Labor Relations Board for the enforcement of a certain order issued by it against the aforesaid Respondent on December 16, 1964. The Court heard argument of respective counsel on February 8, 1966, and has considered the briefs and transcript of record filed in this cause. On June 24, 1966, the Court being fully advised in the premises, handed down its decision denying Board's petition for enforcement of its order.

ON CONSIDERATION WHEREOF, it is ordered, adjudged and decreed by the United States Court of Appeals for the Fifth Circuit that enforcement of the said order of the National Labor Relations Board directed against Great Dane Trailers, Inc., its officers, agents, successors, and assigns, be and it hereby is denied.

ENTERED: July 21, 1966

[fol. 136]

[Clerk's Certificate (omitted in printing)]

[fol. 137]

SUPREME COURT OF THE UNITED STATES

No. —, October Term, 1966

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

GREAT DANE TRAILERS, INC.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF
CERTIORARI—September 21, 1966

UPON CONSIDERATION of the application of counsel for petitioner,

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including October 19th, 1966.

/s/ Hugo L. Black

Associate Justice of the Supreme
Court of the United States

Dated this 21st day of September, 1966.

[fol. 138]

SUPREME COURT OF THE UNITED STATES

No. —, October Term, 1966

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

GREAT DANE TRAILERS, INC.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT
OF CERTIORARI—October 20, 1966

UPON CONSIDERATION of the application of counsel for
petitioner,IT IS ORDERED that the time for filing a petition for
writ of certiorari in the above-entitled cause be, and the-
same is hereby further extended to and including Nov
18th, 1966./s/ Hugo L. Black
Associate Justice of the Supreme
Court of the United States

Dated this 20th day of October, 1966

[fol. 139]

SUPREME COURT OF THE UNITED STATES

No. 781—, October Term, 1966

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

GREAT DANE TRAILERS, INC.

ORDER ALLOWING CERTIORARI—January 9, 1967

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.